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| **100th Congress**<br>**2d Session** | **COMMITTEE PRINT** | **S. Prt. 100-144,**<br>**Vol. 3** |

# A LEGISLATIVE HISTORY OF THE WATER QUALITY ACT OF 1987 (PUBLIC LAW 100-4) INCLUDING PUBLIC LAW 97-440; PUBLIC LAW 97-117; PUBLIC LAW 96-483; AND PUBLIC LAW 96-148

TOGETHER WITH

## A SECTION-BY-SECTION INDEX

PREPARED BY THE

ENVIRONMENT AND NATURAL RESOURCES POLICY DIVISION

OF THE

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# CHAPTER IV

## 98TH CONGRESS

HOUSE DEBATE AND PASSAGE OF H.R. 3282, JUNE 1984; HOUSE COMMITTEE REPORT ON H.R. 3282 (*HOUSE REPORT NO. 98-817*); H.R. 3282, AS REPORTED; ADMINISTRATION TESTIMONY AT 1983 HOUSE COMMITTEE HEARINGS; SENATE COMMITTEE REPORT ON S. 431 (*SENATE REPORT NO. 98-233*); S. 431, AS REPORTED; SENATE COMMITTEE REPORT ON S. 2006 (*SENATE REPORT NO. 98-282*); S. 2006, AS REPORTED; ADMINISTRATION TESTIMONY AT 1982 SENATE COMMITTEE HEARINGS.

**Note:** The 98th Congress considered but took no final action on measures to extend and revise the Clean Water Act. The Senate Environment and Public Works Committee approved and reported two bills, the Clean Water Act Amendments of 1983 (S. 431) and the Nonpoint Source Pollution Management Act of 1983 (S. 2006). The 98th Congress adjourned before the full Senate could consider either of these bills. The House Public Works and Transportation Committee approved and reported a reauthorization bill, the Water Quality Renewal Act of 1984 (H.R. 3282), which the House passed with amendments on June 26, 1984, by a 405-11 vote.

# HOUSE CONSIDERATION OF H.R. 3282 (DEBATE ON THE RULE AND GENERAL DEBATE)

*June 15 and 18, 1984*

(Congressional Record, vol. 130, daily ed., H5919-H5922, H5994-H6004)

## PROVIDING FOR CONSIDERATION OF H.R. 3282, WATER QUALITY RENEWAL ACT OF 1984

Mr. BEILENSON. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 522, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 522

*Resolved*, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3282) to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes, and the first reading of the bill shall be dispensed with. All points of order against the consideration of the bill for failure to comply with the provisions of section 402(a) of the Congressional Budget Act of 1974 (Public Law 93-344) are hereby waived. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Public Works and Transportation, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Public Works and Transportation now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, each section of said substitute shall be considered as having been read, and all points of order against said substitute for failure to comply with the provisions of clause 5(a), rule XXI are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from California [Mr. BEILENSON] is recognized for 1 hour.

Mr. BEILENSON. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Mississippi [Mr. LOTT], and pending that, I yield myself such time as I may use.

(Mr. BEILENSON asked and was given permission to revise and extend his remarks, and to include extraneous matter.)

Mr. BEILENSON. Mr. Speaker, the rule makes in order the consideration of the Water Quality Renewal Act of 1984. The bill, H.R. 3282, is a 5-year authorization of appropriations for various water quality programs, principally wastewater treatment activities. The bill also amends the Federal Water Pollution Control Act and provides for certain construction and other activities under the act.

Mr. Speaker, this measure deals with a large and important national program, and the bill is not without controversy. However, the rule is relatively straightforward, and I am aware of no controversy over the procedure recommended by the Committee on Rules.

This is an open rule, providing for 1 hour of general debate, divided in the customary manner.

The resolution provides for the committee amendment in the nature of a substitute to be considered as original text and to be read for amendment by section. The rule contains provisions customarily included when a committee has reported a substitute. These provisions are noncontroversial and simply assure that Members will have the same rights that would be available in the case of a clean bill:

The substitute is considered as original text. Unless that provision is made, amendments to amendments are considered to be in the third degree and not in order.

Members are permitted to demand a separate vote in the House on amendments to the substitute. Lacking this provision in the rule, only a demand on the entire substitute is permitted.

Finally, provision is made for a motion to recommit, with or without instruction. Without this provision, the adoption of a substitute would preclude instructions in the motion to recommit.

Mr. Speaker, the rule provides waivers of points of order in two cases.

The rule waives the point of order under section 402(a) of the Congressional Budget Act. That provision prohibits the consideration of any authorizing bill not reported by May 15. The Committee on Rules agreed to the request, on the grounds that the bill was acted on in a timely fashion. The general budget parameters were widely understood at the time the bill was initially ordered reported on May 10. And that a good faith effort was made to meet the deadline but that the complexity of the issues involved in H.R.

3282 precluded filing the report by May 15.

Mr. Speaker, the rule also waives points of order against the committee substitute for failure to comply with the provisions of clause 5(a) of rule 21. That rule prohibits appropriations in legislative bills. There are no actual appropriations in the bill, but in making program modifications, the bill makes funds previously appropriated available for new purposes.

Mr. Speaker, this bill presents important issues for Members, both in terms of the budget and the environment. There certainly will be controversy over some provisions. But this is an open rule and it provides a fair and orderly methods for the House to work its will.

Mr. Speaker, I urge the adoption of the resolution. Under my prior announcement, I reserve the balance of my time.

□ 1220

Mr. LOTT. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LOTT asked and was given permission to revise and extend his remarks.)

Mr. LOTT. Mr. Speaker, House Resolution 522, as has been explained by the gentleman from California, is an open rule providing for the consideration of the bill H.R. 3282, the "Water Quality Renewal Act of 1984." The rule waives section 402(a) of the Budget Act against the consideration of the bill since the bill was reported on June 6 of this year, and that provision of the Budget Act requires that bills be reported by May 15.

Mr. Speaker, the rule further provides for 1 hour of general debate on the bill, to be divided between the chairman and ranking minority member of the Committee on Public Works. Following general debate, the bill will be subject to germane amendments under the 5-minute rule, and the amendment in the nature of a substitute reported by the Public Works Committee now printed in the bill shall be considered as an original bill for the purpose of amendment.

The rule waives clause 5(a) of House Rule 21 against the substitute. That rule prohibits appropriations on a legislative bill. The waiver is necessary because the bill contains three instances in which already appropriated funds are being applied to new purposes—in subsections 12 (d) and (e) and 16(g)(4)(B).

Following the consideration of the bill for amendment, the rule provides that it shall be reported back to the House and that a separate vote may be demanded on any amendment adopted to the bill or committee substitute. Finally, the rule provides for one motion to recommit, with or without instructions.

Mr. Speaker, H.R. 3282 reauthorizes the clean water programs administrated by the Environmental Protection Agency through fiscal year 1988. Most of the programs are extended at present levels at a total cost of approximately $600 million a year. These include $100 million a year for grants to develop and operate areawide waste treatment management processes; $100 million a year for the Rural Clean Water Program; $100 million a year to implement interagency agreements for the utilization of other Federal laws to assist in controlling water pollution; and $160 million a year for general administration of the Federal Water Pollution Control Act by EPA.

The bill also increases the authorization level for the construction grants program from its present level of $2.4 billion a year to $2.9 billion for fiscal 1985 and $3.4 billion each for fiscal years 1986 to 1988. The bill also authorizes $1.6 billion a year to establish a new separate grant system to enable States to establish revolving funds to assist communities within States in constructing needed sewage treatment facilities. The bill extends the compliance dates for achievement of best available and best conventional technology. And it increases the Federal share for construction of publicly owned treatment works to 65 percent.

Mr. Speaker, I should point out that this bill was originally reported from the Public Works Committee on May 10, but when it was learned that a sequential referral to the Merchant Marine and Fisheries and Science and Technology Committees was likely, the committee went back on June 6 and reported a substitute that deleted the sections which infringed on those jurisdictions.

Mr. Speaker, while the report on this bill contains five sets of additional and supplemental views, the bill was reported from the Public Works Committee by voice vote, and general bipartisan support for the bill was expressed during our Rules Committee hearing on the measure. Several Members indicated an intention to offer amendments to further toughten or change the bill, but these will be in order under the open rule we have granted. Moreover, the rule was reported by voice vote.

The statement of administration policy we received on this bill indicates opposition to the existing funding levels in the bill: The $6 billion for construction grants in the bill exceeds the administration's fiscal 1985 request by 130 percent, and the cumulative total of $19 billion for these programs through fiscal year 1988 is $11.2 billion or 144 percent over the administration's requested projections.

I urge the adoption of this rule so that we can consider this legislation under an open amendment process.

**Mr. BEILENSON.** Mr. Speaker, I yield such time as he may consume to the distinguished chairman of the committee, the gentleman from New Jersey [Mr. HOWARD].

(Mr. HOWARD asked and was given permission to revise and extend his remarks.)

**Mr. HOWARD.** Mr. Speaker, I rise in support of House Resolution 522, the rule on H.R. 3282, the Water Quality Renewal Act of 1984.

This bill contains extensions of authorizations and new provisions in order to strengthen the Nation's efforts to achieve clean water. H.R. 3282 increases the current authorization for grants to assist in the construction of sewage treatment works from its present level of $2.4 billion to $2.9 billion for fiscal year 1985 and $3.4 billion per fiscal year for fiscal years 1986, 1987, and 1988. Coupled with this is a $1.6 billion per year grant program for the establishment by the States of revolving funds which can be used to assist local communities in constructing sewage treatment plants through innovative financing mechanisms.

Other items in the bill include:

The identification of toxic hot spots where water quality standards will not be met, even with the application of best available technology, and the development of individual control strategies to clean up these critical areas.

The addition of criminal and administrative penalties to add to EPA's enforcement capabilities.

A grant assistance program to encourage the States to develop and implement plans for the control of nonpoint source pollution.

The extension and expansion of the Clean Lakes Program, which provides assistance to restore the water quality of lakes.

Mr. Speaker, as you and the other Members of this body are aware, certain aspects of this bill have become the subject of criticism by various environmental groups. We are presently preparing floor amendments to this bill to resolve the issues which have been raised.

Mr. Speaker, I urge my colleagues to support the rule so that we may proceed with consideration of H.R. 3282.

**Mr. BEILENSON.** Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from New Jersey [Mr. ROE] the distinguished chairman of the subcommittee.

**Mr. ROE.** Mr. Speaker, I rise in support of House Resolution 522, the rule on H.R. 3282, the Water Quality Renewal Act of 1984. This bill is the result of an enormous amount of effort on the part of the subcommittee and the full committee, as well as by Chairman JAMES HOWARD, who has been and is working diligently to develop legislation which is environmentally sound and can be enacted into law.

This bill contains a number of provisions designed to improve the Nation's water pollution control programs.

The Construction Grants Program which provides Federal assistance for the construction of publicly owned sewage treatment plants is presently authorized at a totally inadequate level of $2.4 billion per year. As a result, municipalities are falling farther behind in their attempts to meet the requirements of the act. Our bill addresses this problem in three respects. First, it increases the Federal share after fiscal year 1984 from 55 percent to 65 percent. Second, it increases the authorization for the Construction Grants Program, and, third, it establishes a new grant program to be used by the States to establish water pollution control revolving funds. These revolving funds may be used by the States to make low-interest loans, subsidize bonds, and the like in order to further assist local communities in the construction of sewage treatment works. These new levels of authorization are the absolute minimum required if we are to meet the goals of the act for clean water.

Another major provision is the establishment of a program to encourage and assist States in the control of nonpoint sources of water pollution.

Also, the Clean Lakes Program which provides assistance to the States for the development and implementation of plans to restore the water quality of lakes is addressed. Our bill extends the authorization for the program. In addition, it provides grant assistance to States for priority projects for the control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes.

Finally, it includes administrative and criminal penalities for violations of the act. These are designed to greatly increase the ability of the Environmental Protection Agency to obtain compliance with the act.

I believe that H.R. 3282 is a sound bill. I recognize, however, that not all interested parties agree with this assessment. We are, therefore, developing floor amendments designed to ameliorate the difficulties which have arisen since the bill was ordered reported.

Mr. Speaker, I urge passage of the rule so that we may proceed to floor action on this very important bill.

**Mr. BEILENSON.** Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Pennsylvania [Mr. EDGAR].

(Mr. EDGAR asked and was given permission to revise and extend his remarks.)

**Mr. EDGAR.** Mr. Speaker, I rise in support of this open rule and I want to say to my colleagues that in both the Clean Water Act and the omnibus water bill we are setting a good precedent by having an open rule in both instances.

Relating to the Clean Water Act, there are a number of amendments that will be offered by a number of Members of the House. We are still in negotiations with the chairman of the subcommittee and the chairman of the full committee and the ranking members are working out some of the details of that compromise.

I think an open rule will give us an opportunity to address each of the issues.

I think this House needs to place before it a Clean Water Act that is environmentally sensitive and continues the desire on the part of the House and the Senate to have legislation that provides for clean water that is swimable, fishable, and drinkable.

I believe that the legislation that we have before us is almost in that direction. With a few minor changes dealing with some issues that have been in contention, I believe we can come up with a strong sensible bill, a piece of legislation that makse sense.

So I urge my colleagues to support this open rule and to look at the issues as carefully as they can.

Mr. Speaker, I am a cosponsor of H.R. 3282 and a very strong supporter of many of the provisions of the bill which will advance our constructive efforts to clean up the Nation's waters. Among the most important items contained in the bill are increases in funding for the EPA Construction Grants Program; a valuable grant program for the control of nonpoint pollution from urban and rural runoff; and targeted efforts to clean up the Chesapeake Bay and other bays and estuaries.

Furthermore, as a matter of policy, authorizing legislation to extend the Clean Water Act provides essential continuity for our pollution control programs and reiterates the commitment of Congress to the essential goal of fishable, swimable, pollution-free waters. Many of the programs and general authorizations under the Clean Water Act expired in 1982, and we have been operating without a regular authorization since then.

I was disappointed that some of the most forceful environmental provisons contained in the original version of H.R. 3282, such as the codification of strong water quality standards, were stripped from the bill during committee consideration. I was further disappointed that some additions made to the legislation during committee proceedings may have the effect of delaying enforcement of, or even weakening, existing environmental protection law. Among the most problemmatic of the provisions are a liberal extension—from 5 to 10 years—of the discharge permits issued under our national program to control industrial pollution; an extension of pollution control compliance deadlines for the electroplating industry which discharges over 50 million pounds of toxic chemicals and metals each year; and a loophole in existing law which will allow mining companies to reopen abandoned mines but ignore stringent pollution control measures normally required at mines. I am also discouraged that the committee saw fit to grant variances of normal pollution control requirements for two pulp mills in Alaska, contrary to the decisions and requirements of the EPA.

Granting delays, variances, and waivers for specific industries and firms can only encourage those who might see some short-term benefit in the more substantial weakening of the cirtical provisions of the Clean Water Act. Congress knew that the goals of the act would be difficult to achieve when the act first passed, but Congress also realized that the long-term consequences of poisoning the environment and destroying our natural resources are even more costly. By and large, progress has been made in cleaning up water pollution. Citizens, industry, and Government have made important efforts to accustom themselves to the farsighted requirements of care for the environment. Yet, it will be difficult to sustain this progress if Congress is going to be seen as backing down from some of the most difficult tasks or as granting inequitable relief from regulations.

We all realize that some adjustments must be made in ongoing programs. The original H.R. 3282 took this into account, for example, by extending deadlines under the best available and best conventional technology requirements of the act. But once we find the appropriate deadlines and requirements, we must stick to them and, Mr. Speaker, I support the granting of an open rule for the consideration of H.R. 3282. As I stated there are some vital improvements to this bill which I think must be made on the House floor in an open process. I myself intend to seek changes in the form of amendments on at least three items: The remaining issue; the Alaska pulp mills; and the deadline extension for electroplaters. There are also two additions to the bill which I would like to make in the form of amendments. I would like to offer an amendment to create a national commission to deal with the Nation's ground water problems, and I would also like to offer an amendment to provide some assistance to sewage agencies around the country in dealing with disposal or use of sewage sludge. I have discussed the addition of these two items with the leadership of the Public Works Committee and I hope to get their support on these items.

I am aware of a number of other Members who also are preparing amendments to H.R. 3282 dealing with a number of specific issues. I believe that the committee is also aware that our colleague from Minnesota, Mr. Oberstar, has prepared a substitute amendment for H.R. 3282 which comprehensively deals with the concerns of many Members of the environmental community. I am pleased that the committee will allow a full debate on the range of issues raised by the environmental community on H.R. 3282.

Mr. Speaker, I believe that all the members of the Public Works Committee and of the House want to produce a responsible Clean Water Act reauthorization which preserves and strengthens our commitment to tought measures to clean up pollution. This bill has already undergone substantial changes and modifications in the drafting process thus far. Those of us with concerns on the legislation are continuing to communicate with the leadership of the committee in order to address our remaining concerns. It is important to bring this bill to the floor under an open process so that all remaining problems can be resolved and we can pass a major piece of environmental legislation in the 98th Congress.

Mr. BEILENSON. Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

## WATER QUALITY RENEWAL ACT OF 1984

The SPEAKER pro tempore. Pursuant to House Resolution 522 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 3282.

□ 1500

### IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 3282) to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes, with Mr. Swift in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the first reading of the bill is dispensed with.

Under the rule, the gentleman from New Jersey [Mr. Roe] will be recognized for 30 minutes and the gentleman from Minnesota [Mr. Stangeland] will be recognized for 30 minutes.

The Chair recognizes the gentleman from New Jersey [Mr. Roe].

Mr. ROE. Mr. Chairman, I yield myself such time as I may consume.

(Mr. ROE asked and was given permission to revise and extend his remarks.)

Mr. ROE. Mr. Chairman, it is a pleasure for me to bring to the floor the bill H.R. 3282, the Water Quality Renewal Act of 1984. This bill is the result of an enormous amount of effort on the part of the Subcommittee on Water Resources and the full committee, as well as by Chairman Howard who has been and is working diligently to develop legislation which is environmentally sound and can be enacted into law. I would like to take this opportunity to thank him for his leadership and dedication, and to acknowledge the most helpful cooperation of the ranking minority member of the subcommittee, Congressman Arlan Stangeland, and of course, the ranking minority member of the full committee, Congressman Gene Snyder.

This bill contains a number of provisions designed to improve the Federal Water Pollution Control Program. The bill continues through fiscal year 1988 authorizations at existing levels for a number of programs in the Water Pollution Control Act, including research activities, training of personnel, forecasting the supply of and demand for occupational categories needed in the water pollution control field, grants to State and interstate agencies to assist in administering programs for water pollution control, grants to educational institutions for programs to train personnel in the operation of water pollution control facilities, grants under section 208 for developing and operating areawide waste treatment management planning processes, grants for the Rural Clean Water Program, the Clean Lakes Program, and the General Administration of the Federal Water Pollution Control Act by the Environmental Protection Agency.

The authorization level for the construction grants program is increased from its present level of $2.4 billion per fiscal year to $2.9 billion for fiscal year 1985, and $3.4 billion per year for fiscal years 1986, 1987, and 1988. The Construction Grants Program which provides Federal assistance for the construction of publicly owned sewage treatment plants is presently authorized at a totally inadequate level of $2.4 billion per year. As a result, municipalities are falling further behind in their attempts to meet the requirements of the act. Our bill addresses this problem in three respects. First, our bill increases the Federal share after fiscal year 1984 from 55 to 65 percent. The existing Federal share which was established at 75 percent is scheduled to drop to 55 percent next fiscal year pursuant to the 1981 amendments to the act. Second, we increase the authorization for the Construction Grants Program as previously described; and, third, we establish a new grant program to be used by the States to establish water pollution control revolving funds. These revolving funds may be used by the States to make low interest loans, subsidize bonds and the like in order to further assist local communities in the construction of sewage treatment works. These new levels of authorization are the absolute minimum required if we are to meet the goals of the act for clean water.

Other major provisions of the bill include the following. A program to encourage and assist States in the control of nonpoint sources of water pollution is established. Approximately 50 percent of the pollution entering our Nation's water comes from nonpoint sources. In order to achieve adequate water quality it is absolutely essential that we begin to address the very serious problem of nonpoint sources of pollution.

A new section is added to the Federal Water Pollution Control Act, to provide for nonpoint source control implementation programs. The Governor of each State must submit to the Administrator for his approval a plan which the State proposes to implement, in the first 4 fiscal years beginning after the date of submission of the plan, for controlling pollution from nonpoint sources. The new section provides for grants to States with approved plans for the purpose of assisting the States in implementing the plans. The Federal share of the cost of the plan shall not exceed 50 percent of the cost incurred by the States. However, where the Administrator determines that a significant number of non-Federal, non-State interests in a watershed area are willing and able to enter into agreements to participate in nonpoint source pollution control measures, the grant shall be not less than 50 percent and not more than 60 percent.

The bill contains a number of amendments to section 314 of the Federal Water Pollution Control Act, which establishes a grant assistance program to improve the water quality of lakes. The Clean Lakes Program is made applicable to saline, as well as freshwater lakes. The Administrator is authorized to make grants to States for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The amount granted to the State for such a project shall not exceed 70 percent of the cost of the project. There is authorized to be appropriated not to exceed $100 million per year for the fiscal years 1985 through 1989 for these purposes. Also, grants are authorized for restoration of water quality in lakes and other waters in States which have deteriorated because of high acidity. The amount granted to any State for any fiscal year shall not exceed 80 percent of the funds expended by the State in that year.

There is a provision for the development and implementation of individual control strategies to achieve compliance with applicable water quality standards where it is determined that such compliance will not result from the application of best available technology and best conventional technology.

The maximum amount of a civil penalty for violating certain provisions of the act is increased from $10,000 per day to $20,000 per day.

A provision is added to the act to provide that dischargers or individuals who knowingly violate or cause the violation of certain of the act's requirements will be subject to criminal penalties of up to $50,000 per day and/or imprisonment for up to 2 years. Also, the assessment of administrative penalties is authorized for violations of the act. These are designed to substantially increase EPA's enforcement capability to ensure compliance with the act.

Other provisions include:

A requirement that the Administrator, before approving sewage treatment construction grants for any project, determine that any required areawide waste treatment management plan under section 208 is being implemented for such area and the proposed treatment works are included in such plan or that reasonable progress toward implementation is being made.

A direction to the States to allocate at least 50 percent of the amount granted to the State for planning purposes to comprehensive planning organizations in the State, except in any fiscal year for which the Administrator and Governor of any State determine jointly that allocation of at least 50 percent to such organizations will not substantially assist in achieving the goals of the act.

Mr. Chairman, I believe that H.R. 3282 is a sound bill. I recognize, however, that not all interested parties agree with this assessment. I, therefore, join with the chairman in assuring that we will continue our efforts to develop floor amendments designed to ameliorate the difficulties which have arisen since the bill was ordered reported.

I urge passage of the bill.

I would say to my colleagues who are here today that what we are attempting to do today is have our general debate on this most important legislation, and then we will move from there at another time to go into the amendments that are going to be added.

Mr. STANGELAND. Mr. Chairman, I yield myself such time as I may consume. Mr. Chairman, I am pleased to rise in support of H.R. 3282, the Water Quality Renewal Act of 1984, as reported by the Committee on Public Works and Transportation. This legislation is the result of extensive hearings and concentrated efforts by many Members. The committee had the benefit of information presented by 184 witnesses in 15 days of hearings during the 98th Congress, as well as additional hearings during the 97th Congress. These witnesses included Members of Congress, representatives of State and local governments, industry and environmental organizations, and other interested individuals and organizations.

The chairman of our Public Works Committee, the gentleman from New Jersey [Mr. HOWARD], is to be complimented on the encouragement and leadership that he has once again shown with respect to H.R. 3282. Special recognition is warranted for the chairman of our Subcommittee on Water Resources, the gentleman from New Jersey [Mr. ROE]. The ranking minority member, the gentleman from Kentucky [Mr. SNYDER], has been exceptionally interested and active as well. These legislators have done a remarkably commendable job in researching the issues and crafting the provisions of H.R. 3282.

Mr. Chairman, this bill represents a bipartisan effort to fashion a strong, efficient, balanced approach to ensuring cleaner water for all Americans. H.R. 3282 continues existing programs of the Federal Water Pollution Control Act. It also establishes new important programs which will help meet the goals of the act in a rational, feasible way.

The existing water pollution control program stems from the complete rewrite of earlier law that was incorporated into the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500. The 1972 act had as its goal to reduce and ultimately eliminate the discharge of pollutants from municipal sewage systems, industrial plants, and other sources into the Nation's waters. Important changes in the law were enacted in 1977. These so-called midcourse corrections included additional authorizations for the construction grants program and the establishment of a program for encouraging innovative and alternative approaches to wastewater treatment. Other significant changes to the 1972 act occurred in the 1981 amendments, which related primarily to the construction grants program.

Under the Federal Water Pollution Control Act, the U.S. Environemntal Protection Agency [EPA] is required to establish water quality criteria, technology-based effluent limitation guidelines, pretreatment standards, new source performance standards and a national permit program to regulate the discharge of pollutants. A grant program for construction of publicly owned treatment works provides the carrot for communities to reach the levels of treatment mandated in the law.

States are given the responsibility for developing water quality management programs and for setting water quality standards. The act's technology based limitations prescribe minimum standards of performance for municipal and industrial discharges without regard to the quality of receiving waters. Water quality standards, by contrast, identify intended uses of particular water bodies and, on the basis of water quality criteria guidance developed by EPA, set forth the biological and chemical conditions necessarly to sustain those uses.

Under the act, direct dischargers of pollutants are classified as either point or nonpoint sources. To deal with point sources, the Clean Water Act provides for the national pollutant discharge elimination system [NPDES] which incorporates and applies effluent limitations in individual permits to both municipal and direct industrial dischargers. Under these permits, dischargers are subject to both technology-based treatment requirements and, where necessary to protect a designated use, additional controls based on water quality standards.

Technology-based standards also deal, in part, with pretreatment of industrial wastes from facilities that discharge into municipal sewer systems instead of directly into a particular water body. These facilities are referred to as indirect dischargers. To prevent certain toxic pollutants in these dischargers' waste effluent from passing through a municipal treatment works insufficiently treated or from interfering with the operation of the treatment works, technology-based effluent pretreatment limitations are applied. Delays in getting this program in place and the potential negative impact on already well-performing local pretreatment programs have been continuing problems.

Technology-based does not mean that the Agency prescribes the technology that must be used. Rather, EPA reviews the various treatment techniques presently in use or available in each industrial sector to determine what limitations are achievable using available methods. Once EPA adopts effluent limitations for a particular industry, each discharger can use any method it chooses to achieve these limitations. In practice, however, the range of choice is limited by the availability of technology and its effectiveness in removing pollutants.

The 1972 amendments to the act directed EPA to establish a minimum level of technology-based standards for publicly owned treatment works [POTW's] based on secondary treatment as defined by the Agency, and to establish best practicable technology currently available [BPT] standards for industrial categories. Both are uniform national standards and originally had a compliance date of July 1, 1977. Under the 1972 amendments, EPA was also directed to establish a second level of control standards for industrial categories, based on best available technology economically achievable [BAT], to be complied with by July 1, 1983.

The 1972 amendments' control strategy for toxic pollutants required EPA to develop pollutant-specific effluent standards to be applied to all industrial categories regardless of technological or economic achievability. These effluent standards for toxic pollutants were to be based on the nature of the pollutant rather than on the technologies available to treat those pollutants. The 1972 act instructed EPA to, first, identify toxic pollutants, and then to issue effluent standards for those pollutants.

The act's initial provisions for the development of toxic pollutant standards proved to be cumbersome and time consuming. During the 5-year period immediately following passage of the 1972 amendments, EPA only managed to produce effluent standards for six toxic pollutant standards. The Agency was sued by several citizen groups and, as a result of the suit, a consent decree, commonly referred to as the NRDC consent decree, was entered in June of 1976.

In 1977, Congress passed amendments to Public Law 92-500 in the form of the Clean Water Act Amendments of 1977. The 1977 act codified many of the provisions of the 1976 decree. It classified types of pollutants into conventional pollutants, toxic pollutants, and nonconventional pollutants. Conventional pollutants include those traditionally controlled by wastewater treatment systems, including biochemical oxygen demand [BOD], oil and grease, suspended solids, pH and fecal coliform. Toxic pollutants include the 65 pollutants and categories of pollutants identified in the NRDC consent decree and section 307(a) of the act. Further subcategories of this number have brought the total to 129 pollutants. Nonconventional pollutants is a catchall category which includes pollutants not otherwise designated, such as phosphorus, nitrogen, and ammonia.

New compliance deadlines were also established under the 1977 amendments. BAT for priority toxic pollutants and BCT for conventional pollutants were required to be achieved by all industrial direct dischargers by July 1, 1984. BAT for nonconventional pollutants was to be achieved no later than July 1, 1987, with the possibility of environmental waivers under certain circumstances.

The construction grants amendments of 1981 significantly modified the program for Federal funding of sewage treatment plants that had been in the act since 1972. In 1981, annual funding for the program was reduced from $5 billion per year to $2.4 billion per year. What has been 75 percent Federal funding reduces to 55 percent in October 1984, and certain categories eligible for funding, such as collector sewers, will be funded only if a Governor chooses to do so under a 20-percent discretionary authority.

The bill to be considered today by the House, H.R. 3282, builds on this background, making changes where needed and reinforcing parts of the act so that it can function more efficiently toward our real goal: The highest practicable in-stream water quality throughout the Nation that can be met for the many needs of the American people.

The Clean Water Act, now being reauthorized and amended, has been successful, but it can be made more effective. The act has significantly improved the control of discharges of pollutants into our Nation's waters. It is leading to the cleanup of some of our most polluted waterways, including the St. Louis River in Minnesota, the Potomac River, and the Hudson River. Still, inadequacies of the Clean Water Act have become evident. The program has enabled fish to return to various rivers, but the fish are sometimes too contaminated to eat. It has kept the Nation's waterways from getting any more polluted, despite substantial growth in industry and population. This is a significant accomplishment, but the fact remains that overall water quality has not improved in the last 12 years as much as we would like.

The program has not performed as well as hoped for numerous reasons. These include uncertainties in funding, delays in promulgation of effluent standards for industrial discharges, and lack of detailed information on causes of some instream water quality problems.

Some of the problems relate to the current Clean Water Act. The failure to control nonpoint sources of pollution is one example. It is estimated that over half the pollution entering the Nation's waterways is from nonpoint sources such as construction activities, agriculture, and runoff from streets. Unfortunately, the nonpoint-source situation has not improved much since 1972. Since 1974, nearly half a million dollars has been spent on studies and projects, particularly in the section 208 program of the act, but the problem remains. The costs to society are high. The Nation is losing both productivity and nutrients from its land. The situation demands responsible legislation. H.R. 3282 can help solve our nonpoint-source clean water problems, and it can be done in a way that provides incentives to, not regulation of, our important agricultural and other activities.

Generally, H.R. 3282 provides for an increase in the total authorization for construction grants and a separate grant system to enable States to create revolving funds to help their communities construct needed sewage treatment plants. The bill also make eligible for grant assistance combined sewer overflow projects and collector sewers. It increases the Federal share for the construction of publicly owned treatment works to 65 percent. It also extends the compliance dates for achieving the best-available technology and best-conventional technology requirements of the act. This reflects the delays which have occurred in the promulgation of the effluent limitations. The bill is strict enough to maintain a strong program, while remaining flexible enough to allow necessary adjustments and permit the Environmental Protection Agency to carry out its provisions in a manageable fashion.

The bill provides for, among other things:

A 5-year reauthorization of existing programs;

Revisions of some of the act's compliance deadlines;

An expanded program of grants and revolving funds for the construction of sewage treatment plants;

A new nonpoint-source-control program;

Authority for administrative penalties;

Ten-year national pollutant discharge elimination system [NPDES] permits and partial program delegation to the States;

Continued eligibility for combined sewer overflows [CSO's] and collector systems;

Required passthrough of 205(j) grants to substate planning organizations;

A one-quarter of 1 percent setaside for investigation and auditing activities within the construction grants program; and

Several site-specific projects to deal with major problem areas.

There is one important area not covered by the legislation that I believe should be. It is that of a local alternative to the national pretreatment program. The national categorical program will be of use to the majority of communities in the United States. At the same time, there are cities that can and have developed and operated their own pretreatment programs very successfully. A job is usually done best when it is managed as close to the problem as possible. That is why we have encouraged delegation of many clean water and other programs. It is why we should do the same in the area of pretreatment. Communities, with their industries, are often much better able to manage their mutual water-quality-treatment needs.

I have considered proposing both a nationwide program and a demonstration program. The latter would allow a limited number of cities to show how well a local equivalency pretreatment option might work. In no case, however, would the local option program delay the national pretreatment program. In fact, it could speed it. There would be less opposition to proceeding with the categorical program if those with good locally controlled pretreatment programs were given a chance to act on their own.

In order to proceed, a local pretreatment program would have to control industrial discharges to avoid passthrough of pollutants, interference with its operations, and maintenance of its sludge-disposal options. The POTW also would have to be achieving secondary treatment or be on a schedule of compliance and would have to show that it has adequate funding and resources to implement the local program before being approved for operation. POTW's that are not inclined or do not have the resources to develop and maintain a local program would continue to be required to comply with the national categorical standards.

The current EPA pretreatment program, centered on national technology-based pretreatment standards, does not properly take into account whether such treatment is needed. It can result in costly, redundant treatment by industry and POTW's. In addition, the application of national standards will not appreciably reduce the number of water-quality violations, where they exist. The problems that exist are generally site specific and cannot readily be solved by uniform national standards.

Local conditions are handled best by local entities developing locally responsive programs. Locally controlled pretreatment programs would direct resources to particular problems rather than to treatment for treatment's sake. Where pollutants are removed by the POTW system, it should not be necessary for an industry discharging into the POTW to remove those same pollutants with redundant treatment.

In 1977, Congress amended the act

to provide that, if a POTW were capable of removing pollutants without causing problems with its operations, industrial dischargers should be given credit for such removals. In response to this mandate, EPA developed the present removal credit regulations which were supposed to alleviate the problem of redundant treatment by POTW's and industrial dischargers. However, the regulations are so complex and restrictive that most POTW's have not applied for those removal credits. Industrial dischargers must therefore often continue to install treatment technology and meet pretreatment limits even though a POTW may remove some or all of the pollutants. Implementation of a locally controlled pretreatment program would allow for reasonable resolution of this problem. Where appropriate, the removal credit/national program would be continued. In most cases the national program will probably be used. The efficiency and savings of local control, however, make a local option program desirable in certain situations.

I want to stress that this is not a proposal promoted solely by industry. It is strongly supported by cities and sewage treatment agencies throughout the Nation. The following is quoted from a recent letter from the association of metropolitan sewerage agencies:

> An alternative pretreatment approach would expedite the implementation of effective local controls by enabling POTW's to move forward and avoid the administrative delays associated with the existing Federal program. Any such program should include stringent criteria to provide sufficient safeguards against abuse and also ensure the protection of water quality, sludge quality, and the integrity of wastewater treatment facilities.
>
> Implementation of an alternative pretreatment program would allow the EPA and State agencies to concentrate their resources on those local agencies requiring assistance in carrying out industrial pretreatment programs. Looking over the shoulders of sophisticated and experienced local agencies would only detract from this much needed effort, without any corresponding environmental benefit.
>
> Most important from our perspective, an alternative pretreatment approach would acknowledge the important contribution that local agencies have made and will continue to make to improve the quality of the Nation's waters. The managers of these agencies are indeed the front line environmentalists who bear the ultimate responsibility for protecting the health and environment. We believe it is important to acknowledge their expertise and experience, given recognition to their important status as environmental managers, and enable them to do their jobs without unnecessary Federal interference.

The U.S. Conference of Mayors favors an amendment to provide an alternative system for local pretreatment programs. As communicated to the Committee on Public Works, and Transportation, and EPA, the Conference of Mayors states:

> Cities have the technical expertise and commitment to water quality to develop standards that address the site specific circumstances of their industrial base, and would look forward to carefully and prudently implementing such a program improvement with public health as the top priority.
>
> A provision which utilizes the existing administrative pretreatment regulatory program as a foundation is a manageable way to provide an alternative approach to pretreatment of industrial wastewater and assure the maintenance of industrial wastewater and assure the maintenance of the Clean Water Act's goals and objectives.
>
> We believe that alternative local pretreatment can meet this test.

The National Leagues of Cities, too, is actively supporting such an amendment. The following is part of the league's national municipal policy adopted last year:

> Local governments should be allowed to devise methods to satisfy national standards that not only assure protection of water quality but which are also cost effective under the conditions of their particular jurisdiction. Therefore, as an alternative to federally mandated implementation of the national categorical pretreatment standards, Congress should authorize States to approve local pollutant elimination programs. To qualify for the alternative local program, a POTW should be required to demonstrate to an authorized State agency that: (1) the POTW is in compliance with the requirements of its permit under the national pollutant discharge elimination system [NPDES]; (2) it has developed and implemented a local pollutant elimination program that in the aggregate is equivalent to implementation of the national categorical pretreatment standards; and (3) it is maintaining a local monitoring and reporting program which is adequate to disclose the quality of the receiving waters.

There have been arguments made against the locally controlled programs. Some are outright incorrect. Others are not true for the pretreatment proposal that I am considering. Here are some of the arguments followed by the facts:

> (1) Numerical standards for toxic pollutants are not required by the proposal. It will increase public exposure to toxics, not provide adequate toxics protection, and allow greater discharge of toxics into sewers.

Specific numerical limits on toxic pollutants would be required. These include limits on the POTW's own discharge and on the industrial users of the POTW to assure necessary local pretreatment. The limits on the POTW are both technology-based and water quality-based. This requirement for toxic pollutant limits in the POTW permit follows a specific recommendation of the December 1980 report of the Subcommittee on Oversight and Review (now Investigations and Oversight) of our committee.

> (2) Monitoring programs and maintenance of technical, legal and administrative authority of the POTW is not required.

A rigorous monitoring program would be required for every local system obtaining the authority provided. The monitoring goes beyond current Federal law and would be specifically designed to advance the state of the art of biological monitoring and the development of toxicity data for receiving streams and additional limits for inclusion in the POTW's permit. Adequate technical, legal, and administrative resources are necessary components of an acceptable application. Failure to maintain those resources would be a cause for rescission or modification of the local program authority.

(3) The proposal will increase pressure on localities to set weaker local pretreatment standards and let industry get away with those weaker local limits.

Because this proposal would apply toxics limits in the POTW's own discharge permit, the POTW will have the greatest incentive to set and maintain strong local pretreatment standards. The major reason for this proposal is that many POTW's across this country have strong local pretreatment programs that should not have to be redesigned to accommodate the Federal categorical standards.

(4) The proposal would eliminate present enforcement authority against industrial users of POTWs authorized to implement the alternative local system. This lack of enforcement authority includes EPA and citizens.

The proposal would not eliminate any existing enforcement authority. Both the local and State governments have complete enforcement authority over industrial users of a POTW through the requirements of this proposal and through the existing provisions of the act. Federal and citizen enforcement is available through section 309(f), 505 (a) and (f), section 307(d) and EPA's general pretreatment regulations.

(5) The proposal will create delays in the Federal categorical pretreatment program, allow indefinite delay in localities applying under the proposal so long as their application is incomplete, and prove unworkable administratively.

The proposal would avoid any prospect for delay. Decisions on applications are made by the existing discharge permit officials so as not to impose any administrative burdens on EPA personnel responsible for the categorical pretreatment regulations. Once a complete application for local program authority is filed, a stay of the applicability of the Federal categorical standards is granted until final decision on the application. However, if the application is denied, each industrial user covered by the application must achieve compliance with the Federal categorical pretreatment standards within the time originally allowed for compliance with those standards. In effect, there would be a stay of enforcement only during the processing period for the application. Processing would be required to be completed within 120 days of submission of complete application. A POTW applicant with an incomplete application can obtain one additional 120-day period to complete the application. A stay during this extension may be, but is not required to be, granted by the authority.

(6) This proposal was rejected by the Senate Environment and Public Works Committee.

This proposal was never considered by the Senate Environment and Public Works Committee. Indeed the Senate committee never voted on any locally controlled pretreatment proposal. A similar provision, in fact, is likely to be considered on the floor of the Senate.

(7) The current EPA removal credits regulations will provide POTW's and their industrial users with adequate flexibility.

The EPA removal credits program has not been successful to date. The complexity of the regulations is amazing. There are so many interconnections, stipulations, data development requirements, and conditions to be satisfied in an application that very few POTW's have even seriously considered making an application. The operators of good local POTW's have said that the removal credits program is an empty EPA regulatory promise.

(8) There is not adequate knowledge to decide when "something less" than technology-based standards is adequate because there are few water quality criteria for toxics and virtually no sludge disposal standards for toxics.

The proposal recognizes that water quality considerations cannot be the sole basis for determining whether a POTW system and its local pretreatment program will adequately protect water quality in the stream to which the POTW discharges. For this reason my amendment would include two important provisions. First, when an application is granted, the permit authority must modify the POTW's discharge permit to include technology-based effluent limits at least as stringent as the most stringent direct discharge standards on industrials for each pollutant included in the alternative program authorization. Second, it includes a mandatory monitoring program to develop data on receiving water quality effects of any residual pollutants after these technology-based limits are met. These data are then used to develop and impose water quality-based limits on the POTW and through its pretreatment program on its industrial users.

Sludge use or disposal is recognized under the Clean Water Act, section 405(e), to be a matter for local determination. Once EPA publishes guidelines on the use and disposal of sludge, a POTW must use for dispose of its sludge in accordance with those guidelines. Unfortunately, EPA has not published section 405(d) guidelines as yet. Consequently, States and local governments have had to establish their own guidelines and standards concerning sludge use and disposal. These State and local requirements have, of course, been established and implemented by POTW's for several years. But EPA's tardiness in publishing section 405 guidelines does not mean that there is no Federal information available to the States and local governments on the proper use and disposal of sewage sludge. In fact, there are numerous Federal regulations, guidelines, and documents on the safe use and disposal of sewage sludge.

Of course, as section 405 guidelines are developed by EPA they will apply to all POTW's including those POTW's which have obtained authority to implement their own local pretreatment programs under this approach.

(9) The EPA pretreatment implementation review task force will "iron out" problems with the pretreatment program, making this proposal unnecessary.

This task force has specifically rejected consideration of any legislative changes as part of its agenda, including any consideration of this proposal. Whatever problems the task force irons out with pretreatment, it will not consider mechanisms to allow well-run local POTW's with effective local pretreatment programs to implement their programs as an alternative to the Federal categorical pretreatment program. The task force has the potential to help carry out the national program, and EPA should, as a start, consider early action on the task force's June 12 interim report recommendations. None of this, however, removes the need for an alternative, locally run, program.

Mr. Chairman, there are several provisions which were included in the bill as ordered reported on May 10 but which were deleted after the committee's June 6 reconsideration of H.R. 3282. A number of jurisdictional questions were raised by the Committees on Merchant Marine and Fisheries and Science and Technology. Attempts to resolve these issues informally were not successful. Because of the urgency in assuring that this bill reach the floor, as it has now done, the committee reconsidered H.R. 3282 on June 6 and removed all of the provisions about which questions had been raised. The committee took this action without in any way agreeing to the jurisdictional claims of the two other committees. In fact, we did not discuss these claims with the parliamentarian, and the Public Works Committee disagrees with the two committees' claims. We took this action solely to expedite action on this legislation, and we intend to add these provisions to the bill through the amendment process on the floor.

The provisions deleted include the following:

Discharges into marine waters. This section added a number of new requirements to be met by publicly owned treatment works applying to receive the NPDES permit modification authorized by section 301(h) of the Federal Water Pollution Control Act;

Maintenance of water quality in estuaries. This section authorized the Administrator to convene management conferences to protect the quality of water in estuaries;

Research on effects of pollutants. This section amended section 104(c) of the Federal Water Pollution Control Act to require the Administrator to conduct research on the harmful effects on the health and welfare of persons caused by water pollution;

Chesapeake and Narragansett Bays; New York and New Jersey Harbors; Great Lakes study. This section provided new authority to the Administrator to address water pollution control needs in the Chesapeake and Narragansett Bays and New York and New Jersey harbor area and authorized the Administrator to conduct a Great Lakes consumptive use study;

Application for ocean discharge modifications. This section provided new authority for a publicly owned treatment works to make application to receive a section 301(h) ocean discharge modification;

Clean lakes—lake liming demonstration. This section directed the Administrator to carry out a demonstration program to restore acidified lakes and watersheds through liming;

Great Lakes International Coordination Office. This section authorized the establishment of a new Great Lakes International Coordination Office to provide focused and priority attention to addressing Great Lakes water pollution control needs; and

Conforming amendments. Various conforming amendments were made to reflect the deletion of the above sections.

Mr. Chairman, some of the provisions in the bill are being attacked as not in keeping with reaching clean water goals. Some changes in the legislation may be warranted to clarify the purposes. After all, no bill or law is so perfect that it cannot be improved. However, I am very disturbed that blatant misstatements are being made about some of the bill's provisions.

I am convinced that the challenges

to many provisions would delay cleanup, provide inequitable treatment, and make the programs of the act less workable. As an example, I cite the attack on the 10-year permit provision. The NPDES permits are a cornerstone to the act. They are issued to every direct discharger and contain the limits on what can be discharged. The act now calls for a 5-year limit on each permit. Of the tens of thousands of permits, the vast majority are totally noncontroversial. Still, it takes a great deal of administrative review to reissue the permits. With most "first-round" permits expiring, a backlog of tens of thousands of nonissued permits is diverting attention from the major permits. Extending the permits to 10 years will help relieve the amount of time needed in the future. The 5-year permits can be reopened at the discretion of the Administrator for many reasons. Also, despite the fact that it is not required in the law, the EPA has, in its regulations, a mandatory reopener for changes in toxic effluent guidelines. H.R. 3282 incorporated in the statute for the first time, such a mandatory reopener for the 10-year permits as well.

Why will eliminating 10-year permits hurt water quality? There are thousands of permits that are not being issued. Having them in place is the best way to achieve clean water. The Agency needs to have its personnel devote their time to getting the best, enforceable permits for the largest, most potentially problem industrial and municipal treatment plant discharges. A 10-year permit with the ability to reopen the permit when needed will lead to better management, better enforcement, and better water quality.

Another provision related to conventional, nontoxic constituents is a restatement of existing policy. It has been grossly misrepresented. It does not eliminate pretreatment by industry. Instead, it encourages municipalities to correct operational or other problems caused by that municipality's plant.

I ask all Members to not be misled by misrepresentations. The legislation was developed with one view in mind—to carry on the Federal Water Pollution Control Act by the best, most effective means possible to continue restoring our Nation's water quality.

Mr. Chairman, H.R. 3282 is a vital and greatly needed bill. I can honestly say that this major environmental legislation is crucial to the districts of each and every Member of Congress and that each of us should vote for its passage. We must protect the future of the Clean Water Act. We must strengthen the Clean Water Act. We must finish the job we began 12 years ago.

(Mr. STANGELAND asked and was given permission to revise and extend his remarks.)

Mr. ROE. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from Pennsylvania [Mr. EDGAR].

(Mr. EDGAR asked and was given permission to revise and extend his remarks.)

Mr. EDGAR. Mr. Chairman, I am a cosponsor of H.R. 3282 and a strong supporter of many of the provisions of this bill which will advance our efforts to clean up the Nation's waters. As a matter of policy, authorizing legislation to extend the Clean Water Act provides essential continuity for our pollution control programs and reiterates the commitment of Congress to the essential goal of fishable, swimable, pollution-free water. Many of the programs and general authorizations contained in the original act have lapsed since 1982, and we have been operating without a regular authorization since that time.

Aside from reauthorizing pollution control programs, the bill before us contains several important new initiatives. Among the most important items are funding increases for the EPA Construction Grants Program and a new State Loan Program to assist in the construction of sewage treatment facilities. The bill also creates a valuable new grant program for the States to control nonpoint pollution from rural and urban runoff. We also provide for targeted efforts to clean up pollution in the Chesapeake Bay and other bays and estuaries

I was disappointed that some of the most forceful environmental provisions contained in the original version of H.R. 3282, such as codification of strong water quality standards, were stripped from the bill during committee consideration. I was further concerned that some of the additions made to the legislation during committee proceedings may have the effect of delaying the enforcement of, or even weakening, existing environmental protection law and regulations. Among the most problematic of these provisions are: A liberal extension—from 5 to 10 years—of the discharge permits issued under our national program to control industrial pollution; an extension of pollution control compliance deadlines for the electroplating industry which discharges over 50 million pounds of toxic chemicals and metals each year; and a loophole in existing law which could allow mining companies to reopen abandoned mines without stringent pollution control measures. I was also discouraged that the committee saw fit to grant variances of normal pollution control requirements for two pulpmills in Alaska, contrary to the decisions and requirements of the EPA.

Granting delays, variances, and waivers for specific industries and firms is bad policy in general. In making such exceptions we are inviting other industries and individuals to come to Congress and ask for further weakening of the critical provisions of the Clean Water Act and the regulations put in force to enforce the act. Congress knew that the goals of the act would be difficult to achieve when the law was enacted, but Congress also realized that the long-term consequences of poisoning the environment and destroying our natural resources are even more costly. Citizens, industries, and Government have all made important efforts to adjust to the farsighted requirements of care for the environment. Yet, it will be difficult to sustain our progress in cleaning up our water if Congress is seen as backing down from some of the most difficult tasks or granting unfair relief from certain regulations.

We all realize that it is sometimes necessary to make adjustments in ongoing programs and regulations, but once we find the appropriate requirements and deadlines for enforcement, we must stick to them and get on with the business of cleaning up the water.

Mr. Chairman, there are some vital improvements to the bill, as reported, which must be made on the House floor during the amendment process. I have already been involved in discussions with the committee leadership and other members of the committee to find acceptable ways of improving the bill. We have reached some understanding on issues such as the mining provision, and I believe it is possible to agree on provisions which will take care of a number of other issues. There are also two additions to the bill which I would like to make in the form of amendments. I intend to offer an amendment which would create a national commission to deal with the Nation's groundwater problems, and I will also offer an amendment to provide for some assistance to sewage agencies around te country in dealing with disposal and use of sewage sludge.

I am aware that the chairman of the committee is preparing a substitute amendment for the bill which hopefully will put to rest some of the controversy surrounding certain provisions of H.R. 3282. I should also point out that a number of other members have expressed interest in certain provisions. Our colleague from Minnesota, Mr. OBERSTAR, has prepared a substitute which comprehensively deals with the concerns of many people in the environmental community. I am confident that there will be a full debate of the environmental concerns when we consider amendments to the bill.

I believe that all the Members of the House want to produce a responsible Clean Water Act reauthorization which preserves and strengthens our commitment to tough measures to clean up pollution. Those of us with concerns on the legislation are continuing to communicate with the committee leadership in order to solve the remaining problems. I believe these problems can be resolved so that we can pass this major piece of environmental legislation in the 98th Congress.

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Mr. STANGELAND. Mr. Chairman, I yield such time as he may consume to the gentleman from Arkansas [Mr. HAMMERSCHMIDT].

Mr. HAMMERSCHMIDT. Mr. Chairman, I am pleased to rise today in support of H.R. 3282, the Water Quality Renewal Act of 1984.

The history of the Federal Water Pollution Control Act, particularly since 1972, has been one of substantial progress in meeting the water quality goals of our Nation. A combination of regulatory and funding mechanisms has led to widespread industrial and municipal construction of wastewater treatment facilities. These efforts, together with other special progams in the law, continue to improve the Nation's water quality.

The amendments in H.R. 3282 are a result of a great deal of work, especially on the part of our Public Works Committee chairman, the gentleman from New Jersey, Congressman HOWARD. He has striven to assure the strongest environmental bill possible, consistent with real-world needs. The leadership of our committee's ranking Republican, the gentleman from Kentucky, Congressman SNYDER, as well as that of the Water Resources Subcommittee chairman, Congressman ROE, and his ranking counterpart, Congressman STANGELAND, has also been noteworthy.

H.R. 3282 continues numerous existing programs and establishes some creative and needed new programs. In summary, the bill provides for, among other things:

A 5-year reauthorization of existing programs;

Revisions of some of the act's compliance deadlines;

An expanded program of grants and revolving funds for the construction of sewage treatment plants;

A new Non-Point Source Control Program;

Authority for administrative penalties;

Ten-year national pollutant discharge elimination system [NPDES] permits and partial program delegation to the States;

Continued eligibility for combined sewer overflows [CSO's] and collector systems;

Required passthrough of 205(j)

grants to substate planning organizations;

A one-quarter of 1 percent set-aside for investigation and auditing activities within the Construction Grants Program; and

Several site-specific projects to deal with major problem areas.

One of H.R. 3282's most innovative proposals is the bill's authorization of a new revolving fund program through which a State will be able to provide financing assistance to its political subdivisions and, upon repayment, be able to use that money again to construct needed pollution-control facilities. These funds can be used for loans, guarantees, interest subsidies, and other nongrant purposes. Under this new authority, many more communities will receive funding for construction of needed wastewater treatment facilities. Many communities throughout the Nation have waited in vain for Federal funding, being too far down on the State's priority list, and this new revolving fund program is designed to help those communities meet the act's 1988 deadline.

Mr. Chairman, among its many noteworthy provisions, H.R. 3282 contains two new authorities that should be highlighted. Section 24(c), among other things, directs the Administrator of the Environmental Protection Agency, in cooperation with the U.S. Army Corps of Engineers, to conduct a comprehensive 1-year study of Beaver Lake, AR, in order to identify measures to optimize the use and quality of the lake's waters. The provision also directs the Administrator, upon completion of his study, to conduct a demonstration project at Beaver Lake to determine the effectiveness of measures designed to preserve and enhance the quality of the lake's water for current and future users. Section 24(c) Beaver Lake language is designed to protect one of northwest Arkansas' most important sources of drinking water, and I am strongly supportive of this provision.

A second provision in the bill which is of great importance to me and the people of Arkansas is H.R. 3282's section 25(c), which amends the Federal Water Pollution Control Act to authorize partial delegation to the States of the act's NPDES Program. This provision is designed to increase individual States' NPDES Program implementation activities, particularly those of the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. It is a provision which I believe will expedite achievement of the act's water quality goals and I compliment the committee for recognizing its importance and including it in the Water Quality Renewal Act of 1984.

Mr. Chairman, there are numerous other important water quality provisions in the bill before us today which are deserving of mention but which time will not permit us to discuss in detail. Some of those have been highlighted by the Members who have preceded me and others will be described after I conclude. Allow me, in summary, to indicate my strong support for H.R. 3282 and my desire to see this bill pass quickly and overwhelmingly here in the House.

Mr. ROE. Mr. Chairman, I yield 4 minutes to the honorable gentleman from Arizona [Mr. McNULTY].

(Mr. McNULTY asked and was given permission to revise and extend his remarks.)

Mr. McNULTY. I thank the gentleman for yielding me this time.

Mr. Chairman, I would like to take this opportunity to thank the chairman and his good staff for their efforts in getting this bill out and before us today. This legislation presents a careful balancing of interests, certainly. I am particularly impressed with the range of water-quality issues that are addressed in this bill.

Probably one of the more important sections of the bill is that which is dedicated to non-point-source-control programs. I agree that pollution from nonpoint sources is our biggest obstacle in realizing the goals of the Clean Water Act. We have made major strides in controlling point sources of pollution—those coming from municipal waste-water-treatment plants and from industry. There has been no comparable program for runoff, or nonpoint pollution. The committee bill before us today would provide for such a program.

Pollution from nonpoint sources represents a serious threat to the integrity of our waters. The total economic cost of sediment and pollutants associated with erosion may amount to as much as $3 billion per year, for water treatment and dredging, in damages to fisheries and recreation, in lost reservoir capacity, and many other resources. Nonpoint sources carry not only sediment and excess nutrients, but pesticides and other toxics from construction and street runoff and other sources. This is a serious problem in urban areas as well as rural areas.

Without a doubt, the biggest water-quality problem we face in Arizona is ground-water contamination. Further, our ground water is being contaminated to a large degree by nonpoint-source pollution. Metropolitan Tucson, with a population of 550,000 people, is one of the largest cities in the country that is entirely dependent on ground water for its water supply. Recently, however, trichloroethylene [TCE] contamination of ground water has been found in Tucson and Greater Phoenix. Our situation in Tuscon is particularly severe; the quantities of TCE in our aquifer are large and the potential for spreading is very real. Given the fact that Tucson is solely dependent upon ground water for its municial supply—we are in trouble.

Mr. Chairman, we in Tucson are far from being the only area that is concerned about the protection of sole-source aquifers. EPA defines a sole-source aquifer as one that supplies 50 percent or more of the drinking water for area. Now, there are 17 sole-source aquifers in 12 States and they are located beneath all or parts of 49 congressional districts. This designation, however, does not provide enough protection for these special aquifers. In an effort to identify the water-quality problems that these special aquifers are threatened with, I intend to offer an amendment to this bill that would authorize the Administrator of EPA to conduct five studies of particular sole-source aquifers. The studies are to identify existing and potential point and nonpoint sources of ground water degradation and to develop management plans to improve ground water quality in the sole or principal source aquifer.

In closing, I salute Mr. Roe for directing this major environmental effort and I thank Mr. Oberstar for developing the strong and well-advised non-point-source control scheme that the committee has adopted here in this measure.

Mr. STANGELAND. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I have no further requests for time, but before I yield my time back, I want to commend those who participated in the debate today, particularly Mr. Hammerschmidt of Arkansas, who preceded me as the ranking member on Water Resources, for his diligence and hard work in the past and also in helping to craft this legislation.

I would also commend my friend from Pennsylvania, [Mr. Edgar]. I think the Public Works and Transportation Committee has brought a good clean-water bill to the floor of the House. However, as the gentleman from Pennsylvania points out, the leadership of the committee and the subcommittee went to the Committee on Rules, requested an open rule, and Rules was kind enough to approve that open-rule request that the House passed last Friday. So, while I believe we have an excellent piece of legislation before us, the House will have the privilege and the opportunity to work its will in passing this legislation.

I just want to say that it is extremely critical that we act on this legislation and we will be going into the amendment process in a very short time. It is important to pass this legislation prior to the Fourth of July break, so that we can move on and assure that we have a reasonably decent chance of getting this bill passed into law before this Congress adjourns.

With that, Mr. Chairman, I yield back the balance of my time.

Mr. ROE. I yield myself such time as I may consume.

Mr. Chairman, I want to take a minute to express my great regard for Arlan Stangeland, our Congressman from Minnesota, who is our ranking Member, who has done an extraordinary job on this bill. I want to commend Mr. Edgar of Pennsylvania, who has been a real leader in the field of water quality and cleaning up the pollution of the waters in our Nation.

I also want to commend Mr. McNulty, who spoke so well in reference to his non-point-source contribution to this legislation and I think they all have made a great contribution to the overall intent of what we are trying to do here in Congress.

I join with the gentleman from Minnesota in some of his comments. We have asked for an open rule, giving everyone an opportunity to be able to be heard on this vitally important legislation, and we will take up those areas where we may have some differences of opinion when we get to the point of considering amendments.

Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

● Mr. CORRADA. Mr. Chairman, I rise in support of H.R. 3282, the Water Quality Renewal Act of 1984. I wish to commend the chairman of the House Public Works and Transportation Committee, James Howard, and Mr. Robert Roe, chairman of the Subcommittee on Water Resources, for their diligence, leadership, and expertise in bringing this legislation to the House floor.

The bill we are debating today is crucial in maintaining the national program of support for construction and maintenance of sewage treatment plants in Puerto Rico and throughout the rest of the Nation. I commend the gentlemen from New Jersey for shaping this important legislation, and in playing their leadership role in attempting to maintain the role of the Environmental Protection Agency in helping our environment.

Mr. Chairman, H.R. 3282 increases the annual authorization for municipal sewage treatment plant construction grants to $2.9 billion in fiscal year 1985, and $3.4 billion for 3 consecutive fiscal years thereafter. This section of the legislation also sets the Federal share of funding for treatment plants at 65 percent of construction costs, a reasonable compromise which will help many States and communities continue programs already begun. This is a reasonable level of funding for the Federal share, and a workable compromise which keeps the Federal presence at a level to help maintain water quality standards.

Across the board, the legislation before us today has been brought to the floor with the concern of all U.S. citizens that the water supply in this country is a cherished national resource, one that merits a continuing congressional response, and one that needs continuing Federal presence.

Other provisions of H.R. 3282 are also commendable. The committee has recommended an expansion of the Clean Lakes Program, already in existence, and authorized a 4-year program of ways to control nonpoint source pollution, as well as an increase in the Federal role in studying acidification of lakes.

The legislation also restores funding eligibility for collection sewers previously curtailed in the 1981 amendments, a provision which will restore funding for lines which run from individual homes to the central system.

Mr. Chairman, in sum, the legislation before us is, overall, a sound measure, one designed to continue the national role in maintaining water quality standards. I am aware that there will be amendments offered today with the intent of strengthening some of the programs of this legislation, and altering the bill as it was brought to the House floor. But I think all of us here today owe a debt of gratitude to the leadership and the House Public Works Committee for bringing this measure to the floor in its present form.●

● Mr. RAHALL. Mr. Chairman, as William D. Ruckelshaus, the EPA Administrator pointed out in a recent speech to the National Press Club, the problems of identifying and dealing with toxic pollutants are substantially more complex than those that we encountered in earlier stages of our environmental clean up efforts.

EPA has needed more time than Congress originally anticipated to develop the complicated guidelines that are to be implemented in the NPDES permit system and that serve as the benchmark for pretreatment standards under the Clean Water Act. Recognition of that fact is embodied in H.R. 3282 through extension of compliance dates under the Clean Water Act for achievement of effluent limitations requiring application of best available technology [BAT] and best conventional pollutant control technology.

Given the complexity of the task, it is not surprising that EPA has needed additional time to develop effluent limitations and categorical pretreatment standards. Under the act, BAT guidelines are to be developed for various classes and categories of point sources, taking into account such factors as the age of the equipment and facilities involved, the particular process employed, the engineering aspects of applying various types of control techniques, process changes, the cost of achieving effluent reductions, environmental impacts other than those relating to water quality—including energy requirements, and such other factors as the Administrator deems appropriate.

When these factors are considered, EPA may well find it necessary to develop separate effluent limitations and standards for different sources or groups of sources within a single industry. Indeed, given the range that may exist in age of equipment, production processes, engineering requirements, compliance costs, and so forth, it might well be appropriate to prescribe a separate effluent limitation or pretreatment standard for an individual facility which differs significantly from other plants in the same industry or production category with respect to one or more of these characteristics.

A recent decision of the U.S. Court of Appeals for the Third Circuit in the case of National Association of Metal Finishers against EPA underscores the importance of taking interplant differences into account during the standard-setting process. The appeals court in that case held that EPA may not grant fundamentally different factor variances from pretreatment standards for toxic pollutants once those standards have been promulgated in final form. If the third circuit's decision is upheld on review—and I take no position on the question, since it is now before the Supreme Court—the only way to take account of fundamentally different factors between facilities will be through the establishment of appropriate subcategories—even at the individual plant level—during the standard-setting process.

As a member of the subcommittee which authored this legislation, it is my opinion that the Clean Water Act currently allows EPA to establish subcategories reflecting differences in circumstances among facilities within an industry. In appropriate cases, the subcategory, in my opinion, could be limited to a single source or facility if that source or facility possesses relevant characteristics different from those of the other sources or groups of sources within the industry.●

● Ms. FERRARO. Mr. Chairman, I want to commend the Public Works and Transportation Committee and its chairman, the distinguished gentleman from New Jersey, for bringing this important piece of legislation to the floor. The bill before us today, the Water Quality Renewal Act of 1984, has a number of admirable features.

For example, the increase in the construction grants program to $2.9 billion in fiscal year 1985 and $3.4 billion for the following 3 fiscal years is of critical importance to the Nation's cities.

Also, I am pleased to note that the problem of combined sewer overflows, a very serious concern in many older communities, is addressed in the bill. I want to express my appreciation to the Public Works Committee and to the chairman for these and many other improvements to existing law that are incorporated in the bill.

Regrettably, there is one provision of the bill, a provision aimed solely at New York City, that I oppose. Section 30 purports to increase environmental protection by hastening the completion of two sewage treatment plants and thus ending raw sewage discharges.

In fact, the end of these discharges is in sight and this provision will not cause the discharges to end any sooner. The city of New York is proceeding on an accelerated schedule to complete the two treatment plants that, when in operation, will end raw discharges. The only constraints affecting the construction schedule are the physical characteristics of the sites. For instance, at the site of the North River plant along the Hudson River, there are six contractors working side by side on this immensely complicated construction project. The only way you could have more workers on the site would be to put them on barges working from the Hudson River. So the only constraints are physical ones, not lack of effort, or commitment.

Furthermore, the city has entered into a court-supervised consent decree that specifies the exact dates when these plants must go into operation. Mr. Speaker, the city of New York is 6 months ahead of the schedule governing completion of the plants. The North River plant is now slated to begin operation in November 1985. The Red Hook plant in Brooklyn will go into service a year later.

I repeat, nothing in this provision will get these plants built any more quickly. And I would add, New York City has spent $1.5 billion in the past decade to upgrade nine sewage treatment plants to full secondary treatment. This effort is indicative of the good faith effort the city has made to modernize its treatment facilities and improve regional water quality.

Some of you may be wondering why I and other Members of the New York State delegation are so concerned about the language in this section of the bill. Quite simply, the bill could make it very difficult to finance new construction in New York City. It would not do this explicitly. But by establishing a numerical ceiling for average daily discharges of sewage, a ceiling that cannot be exceeded, it leaves open the possibility that a court enforcing the provision would call for a moratorium on new sewer hookups.

Furthermore, the possibility of such courts action creates a cloud of uncertainty over the development market, which could greatly complicate the financing of new projects. Mr. Speaker, section 30 of the Water Quality Renewal Act is unfair, it is discriminatory in that it applies only to New York City, and it will provide no environmental benefits whatsoever. It puts at risk one of New York's most important industries.

If the House wishes to address the problem of raw sewage discharges—and I believe that we should do so—let us act in an even handed, non punitive, nondiscriminatory manner. Next week, when we consider amendments to the Water Quality Renewal Act, I will offer such an amendment and I urge my colleagues to support it.●

● Mr. HOWARD. Mr. Chairman, I wish to express the strongest possible support for H.R. 3282, the Water Quality Renewal Act of 1984, as reported by the Committee on Public Works and Transportation.

It is my belief that H.R. 3282 represents the strongest effort to protect our Nation's water resources that has been produced since this program was initiated more than a decade ago. I believe this bill charts national water policy for the remainder of the 1980's.

I wish to commend Representative ROBERT A. ROE, the chairman of the Subcommittee on Water Resources, the other members of the subcommittee as well as the members of the full committee for their outstanding work on this bill.

Protection of our waters is among the most important responsibilities we have in the Congress. Water is at the same time the cheapest but most expensive commodity we have. Over the years, we have learned that we can pollute the waters quickly but it takes years to clean them up. Coming from a shore district that is strongly dependent on clean water, I am especially aware of the need to prevent any degradation.

We must continue the efforts that have been made in the last decade to clean up the waters. We have heard many reports of improved water quality, of the return of fish to areas where they had not been for years. I believe H.R. 3282 will allow us to continue in that direction.

Among the major features of the bill are:

A $19 billion, 4-year combination grant and loan program for construction of sewage treatment plants;

A program to clean up toxic hot spots that cannot be removed through normal procedures;

A program to set up interstate management conferences to protect and clean up our bays and estuaries;

The cleanup of some of the Nation's major waterways, such as the Chesapeake Bay, the Narragansett Bay and the New York-New Jersey Harbor area;

A ban on the discharge into estuaries of sewage that has not received secondary treatment;

Authorization of the $125 million Clean Lakes Program;

Requirements that industry comply with best available technology requirements within 3 years, 6 months of the promulgation of regulations by EPA.

One other feature of this bill that I would like to describe would place a cap on the amount of raw sewage that New York City can discharge. This issue has been sneered at as local but is extremely important in the protection of our environment.

New York City discharges 220 million gallons of raw sewage daily by its own admission. Some say the amount may be even greater. To understand the magnitude of that amount, it is necessary to realize that 220 million gallons of raw sewage would cover 12 square miles an inch deep, or, if piled on the football field at Giants stadium, would reach to more than half the height of World Trade Center.

New York discharges that amount every day and the sewage heads directly to the beaches of New Jersey.

New York is 30 years behind in its schedule of sewage treatment plant construction and years behind every other major city in this country.

This provision is not punitive, malicious or discriminatory. It simply requires New York to do what every other city has done—stop discharging raw sewage.

All the amendment does is set a date of March 15, 1986, almost 2 years away, by which New York must stop adding to its raw sewage discharge. There is no requirement that it be reduced except through the existing court orders which go into effect after that date. If New York complies with the court order requiring construction of the sewage treatment plants, there should be no problem. However, adoption of this provision will place New York on notice that there will be no further delays or waivers in the requirement that sewage be treated.

This is not a construction ban—New York can build all it wants as long as the construction does not increase the discharge of raw sewage.

This provision is not discriminatory. More than 100 towns in New Jersey and hundreds of other cities throughout the Nation have had building bans because of a lack of sewage treatment facilities, but New York has not. New York does not have to live with the sewage. New Jersey does.

This provision is not punitive. If New York does what the court order requires, what every other major city has done and what its own officials claim will be done to complete the sewage treatment plants, there will be no violation of this provision.

The Clean Water Act was approved in 1972 to clean up the Nation's waters. It is time that the act applied to New York City.

Mr. Chairman, I urge passage of H.R. 3282, the Water Quality Renewal Act of 1984, so that we can continue the efforts to preserve the quality of our environment that were begun with the 1972 act.●

● Mr. ADDABBO. Mr. Chairman, although H.R. 3282 has many good features, I would like to take this opportunity to bring to the attention of my colleagues one provision of the bill which is very bad—bad as policy, bad as precedent, bad for the Clean Water Act. That is section 30 of the bill as reported. This section is directed solely at New York City.

The section specifically would limit "raw sewage" discharges in the city to the average over the year preceding March 15, 1986.

There should be no mistake: sewage discharges are not to be condoned. The Clean Water Act is designed to clean them up, quite properly, and much progress has been made. Along with funding for construction grants, the act contains substantial civil and criminal enforcement authority which applies equally to all communities in this country to compel continued progress in cleaning up our waters. What is troubling about this provision of the bill is that it retreats from this national approach, choosing instead to impose unique penalties upon one particular region, New York.

The bill is silent on the consequences to New York City of violating the new standard. Presumably the civil and criminal penalties of the Clean Water Act would apply. In addition, a court enforcing the provision would quite likely call for a moratorium on new sewer hookups. More important, a cloud on real estate development in the city would be created by the prospect of such sanctions, and by the uncertainty as to how much new construction is allowed—regardless of whether the new standard is ever violated.

Mr. Chairman, New York does not plan to increase its sewage discharges. On the contrary, two large new treatment plants are currently under an accelerated construction program which will put them on line well ahead of schedule, barring unforeseen circumstances. Indeed, it is precisely this fact which renders the provisions in H.R.

3282 devoid of any practical justification. Funding is available to ensure completion. The construction site is large and there is a limit to the number of contractors that can work there, but these minor problems are being resolved.

A great deal remains to be done in this country to clean up pollution, notwithstanding the sweeping environmental statutes that were passed in the 1970's. For example, the original deadline for secondary treatment of sewage was 1977; yet in 1982, the Environmental Protection Agency estimated that $31 billion of construction is still needed to meet our goals. There are still over 200 communities in all areas of the country where municipal wastes are being discharged into our waters with no treatment at all. There are hundreds of plants which are not in compliance with the secondary treatment requirement, including many in New Jersey, New York, and every other State. We can either pretend this isn't so, or we can seek to address the facts honestly and constructively.

Let us endeaver to speak honestly about the Clean Water Act. The people of this country demand clean water. Every level of government shares in this goal. Let us seek to work together to find solutions to the remaining problems, which are not exclusive to New York.

An amendment will be offered to remedy this situation and I urge my colleagues to join me in support of it.●

● Mr. McKINNEY. Mr. Chairman, I rise today to congratulate the members of the Committee on Public Works and Transportation for undertaking and accomplishing an unenviable task—approving a measure to reauthorize and revise the Clean Water Act. While H.R. 3282, the Water Quality Renewal Act, does not satisfy each constituency affected by water pollution law, it is a comprehensive measure designed to address each important section of the Clean Water Act, as well as to add further sections of law to compensate for areas that have until now been overlooked by water pollution regulations. I am also confident that in our deliberations the House will be able to perfect the measure so that it will maintain the all important balance between industrial development and the well-being of our natural environment.

Of particular importance to New England, more specifically the States of Connecticut and New York, is the committee-approved section regarding estuaries. If enacted, this section will have an historic effect on pollution control efforts in Long Island Sound. As originally introduced by Mr. HOWARD, H.R. 3282 included a general provision which required the Environmental Protection Agency [EPA] to convene a management conference to formulate a comprehensive water quality restoration plan for each estuary affected by interstate-sourced pollution.

On September 30, 1983, and again on March 2, 1984, I wrote to the Public Works and Transportation Committee outlining the need for an EPA conference to help untangle the interstate management problems impeding a coordinated pollution control strategy for Long Island Sound. Each letter was cosigned by the Connecticut and Long Island House delegations, as well as by Representatives RICHARD OTTINGER and HAMILTON FISH. I was pleased to learn that on May 1, 1984, the Subcommittee on Water Resources approved a Clean Water Act reauthorization package in which Long Island Sound was given priority consideration under the estuaries provision. The full committee also approved the estuaries section on May 10.

For the residents of New York, Connecticut, and thousands of others who each year use Long Island Sound for their livelihood and recreation, a comprehensive interstate pollution control plan has been long overdue. Numerous water quality problems occur each year, such as the closure of shellfish beds and periodic prohibitions on swimming. Yet, disagreements over State jurisdiction and responsibility have always stood in the way of progress.

Currently, the National Marine Fisheries Service, the U.S. Coast Guard, the Interstate Sanitation Commission, the Army Corps of Engineers, Connecticut and New York and two regional offices of the EPA share authority over the sound. In the past everyone's efforts to deal with the sound's very real pollution problems were sabotaged by the resulting bureaucratic snarl.

In contrast to the current makeshift and often contradictory Long Island Sound management policy, enactment of section 9 and the subsequent establishment of an EPA conference would lay the firm groundwork for a coordinated water quality scheme. The interstate conference would be charged with: First, developing an inclusive master plan for the sound; second, coordinating and implementing the master plan; third, recommending priority corrective actions and compliance schedules; and fourth, monitoring the estuary to determine the success of the master plan.

The estuaries provision is a crucial addition to existing water pollution law; and one which promises to be instrumental in maintaining the integrity of one of the Northeast's primary water resources—Long Island Sound.●

Mr. ROE. Mr. Chairman, I move

that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. McNulty) having assumed the chair, Mr. Swift, Chairman of the Committee of the Whole House on the State of the Union, reported that the Committee, having had under consideration the bill (H.R. 3282) to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes, had come to no resolution thereon.

## HOUSE CONSIDERATION OF H.R. 3282 (DEBATE ON AMENDMENTS)

*June 26, 1984*

(Congressional Record, vol. 130, daily ed., H6859-H7018)

### WATER QUALITY RENEWAL ACT OF 1984

The SPEAKER pro tempore. Pursuant to House Resolution 522 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 3282.

☐ 1450

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 3282) to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes, with Mr. Kazen, Chairman pro tempore in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Monday, June 18, 1984, all time for general debate had expired.

Pursuant to the rule, the committee amendment in the nature of a substitute now printed in the reported bill shall be considered as an original bill for the purpose of amendment, and each section shall be considered as having been read.

The Clerk will designate section 1.

The text of section 1 is as follows:

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

Section 1. This Act may be cited as the "Water Quality Renewal Act of 1984".

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ROE

Mr. ROE. Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Roe: Strike out all after the enacting clause and insert in lieu thereof the following:

SHORT TITLE

Section 1. This Act may be cited as the "Water Quality Renewal Act of 1984".

AUTHORIZATIONS OF APPROPRIATIONS

Sec. 2. (a) Section 104(u) of the Federal Water Pollution Control Act is amended—

(1) in clause (1), by inserting after "September 30, 1982," the following: "and not to exceed $22,770,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,";

(2) in clause (2), by striking out "and $3,000,000 for fiscal year 1982" and inserting in lieu thereof the following: "$3,000,000 for fiscal year 1982, and $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988"; and

(3) in clause (3), by striking out "and $1,500,000 for fiscal year 1982," and inserting in lieu thereof the following: "$1,500,000 for fiscal year 1982, and $1,500,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".

(b) Section 106(a)(2) of the Federal Water Pollution Control Act is amended by inserting after "1982" a comma and the following: "and $75,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, and 1988".

(c) Section 112(c) of the Federal Water Pollution Control Act is amended by striking out "and $7,000,000 for the fiscal year ending September 30, 1982," and inserting in lieu thereof the following: "$7,000,000 for the fiscal year ending September 30, 1982, and $7,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".

(d) Section 208(f)(3) of the Federal Water Pollution Control Act is amended by striking out "and September 30, 1982" and inserting in lieu thereof "September 30, 1982, September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".

(e) Section 208(j)(9) of the Federal Water Pollution Control Act is amended by inserting after "1982," the following: "and $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1085, September 30, 1986, September 30, 1987, and September 30, 1988,".

(f) Section 304(k)(3) of the Federal Water Pollution Control Act is amended by striking out "1983" and inserting in lieu thereof "1988".

(g) Section 314(c)(2) of the Federal Water Pollution Control Act is amended by striking out "and $30,000,000 for fiscal year 1982" and inserting in lieu thereof the following: "$30,000,000 for fiscal year 1982, and $30,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, and 1988".

(h) Section 517 of the Federal Water Pollution Control Act is amended by striking out "and $161,000,000 for the fiscal year ending September 30, 1982" and inserting in lieu thereof "$161,000,000 for the fiscal year ending September 30, 1982, and $160,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".

### AUTHORIZATIONS FOR CONSTRUCTION GRANTS

SEC. 3. Section 207 of the Federal Water Pollution Control Act is amended by striking out "and for the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, not to exceed $2,400,000,000 per fiscal year" and inserting in lieu thereof "for the fiscal year ending September 30, 1982, and September 30, 1983, not to exceed $2,400,000,000 per fiscal year; for the fiscal year ending September 30, 1984, not to exceed $2,400,000,000; for the fiscal year ending September 30, 1985, not to exceed $2,900,000,000; and for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, not to exceed $3,400,000,000 per fiscal year".

### COMPLIANCE DEADLINES

SEC. 4. (a) Section 301(b)(2)(C) of the Federal Water Pollution Control Act is amended to read as follows:

"(C) for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established;".

(b) Section 301(b)(2)(D) of the Federal Water Pollution Control Act is amended by striking out "not later than three years after the date such limitations are established" and inserting in lieu thereof "as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established".

(c) Section 301(b)(2)(E) of the Federal Water Pollution Control Act is amended by striking out "1984" and inserting in lieu thereof "1987".

(d) Section 301(b)(2)(F) of the Federal Water Pollution Control Act is amended to read as follows:

"(F) for all pollutants (other than those subject to subparagraph (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established.".

(e) The Administrator of the Environmental Protection Agency shall promulgate final regulations establishing effluent limitations in accordance with sections 301(b)(2)(A) and 307(b)(1) of the Federal Water Pollution Control Act for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives which are discharged from the categories of point sources in accordance with the following table:

| Category | Date by which the final regulation shall be promulgated |
|---|---|
| Foundries | June 30, 1984 |
| Inorganic chemicals (phase II). | June 30, 1984. |
| Nonferrous metals forming. | October 31, 1984. |
| Organic chemicals and plastics and synthetic fibers. | February 28, 1985. |
| Pesticides | November 30, 1984. |
| Plastics molding and forming. | September 30, 1984. |
| Nonferrous metals (phase II). | November 30, 1984. |

### INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS

SEC. 5. (a) Section 304 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(l)(1) Not later than one year after the date of enactment of this subsection, the Administrator, in cooperation with the States and after notice and opportunity for public comment, shall publish in the Federal Register a list of all navigable waters in each State for which the Administrator does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a). For each segment of the navigable waters included on such list, the Administrator shall determine the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source. At a minimum, the Administrator shall consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after the date of enactment of this subsection.

"(2) Not later than one year after the date of publication of the list required by paragraph (1) of this subsection, the Administrator, in cooperation with the States, shall issue proposed regulations setting forth, for each listed segment of the navigable waters, an individual control strategy. Each individual control strategy shall produce a reduction in the discharge of toxic pollutants from point sources identified by the Administrator under paragraph (1) through the establishment of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy. Not later than 180 days after issuing the proposed regulations, the Administrator shall promulgate each individual control strategy as a final regulation.

"(3) The Administrator shall implement each individual control strategy promulgated under paragraph (2) by modifying or requiring the modification of permits under section 402 of this Act.".

(b) Section 509(b)(1) of the Federal Water Pollution Control Act is amended by striking out "and (F)" and inserting in lieu thereof "(F)" and by inserting after "any permit under section 402," the following: "and (G) in promulgating any individual control strategy under section 304(l),".

### CIVIL PENALTIES

Sec. 6. (a) Section 309(d) of the Federal Water Pollution Control Act is amended by striking out "$10,000" and inserting in lieu thereof "$20,000".

(b) The Federal Water Pollution Control Act shall not be construed as requiring a State to have a civil penalty for violations described in such section 309(d) which have the same monetary amount as the civil penalty established by such section, as amended by subsection (a) of this section.

### STUDY OF EFFECTS OF DAMS ON WATER QUALITY

Sec. 7. Section 516 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(f) The Administrator, in cooperation with interested States and Federal agencies, shall study and monitor the effects on the quality of navigable waters attributable to the impoundment and discharge of water by dams. The results of such study, together with any recommendations for the control of such impoundment and discharge, shall be submitted to Congress not later than December 31, 1985.".

### CONTROL OF NONPOINT SOURCES OF POLLUTION

Sec. 8. (a) Title III of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new section:

### "NONPOINT SOURCE CONTROL IMPLEMENTATION PROGRAMS

"Sec. 319. (a)(1) The Governor of each State shall prepare and submit to the Administrator for his approval, a report which—

"(A) identifies those portions of the navigable waters within the State which, as a result (in whole or in part) of pollution from nonpoint sources, are not meeting applicable water quality standards or the goals and requirements of this Act;

"(B) identifies those categories and subcategories of nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

"(C) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsection (i); and

"(D) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category or subcategory.

"(2) Each report submitted under paragraph (1) shall be based on available information including, but not limited to, information available under sections 208, 303(e), 304(f), and 305(b) of this Act, and may include all or part of any water quality management program approved under section 208 or 303 of this Act.

"(b)(1) The Governor of each State shall prepare and submit to the Administrator for his approval—

"(A) a plan which such State proposes to implement in the first four fiscal years beginning after the date of submission of such plan for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters; and

"(B) a report which (i) identifies each department, agency, or instrumentality of the United States and each department, agency, or instrumentality of the State which is likely to be engaging in, supporting, or providing financial assistance in each of such fiscal years for any activity or program in the State which, if carried out, would be inconsistent with implementation of such plan in such fiscal years, and (ii) recommends to the Administrator methods by which such Federal department, agency, or instrumentality could modify administration of such activity or program, and describes methods by which such State department, agency, or instrumentality intends to modify administration of such activity or program, so that such activity or program is consistent with, and assists the State in implementation of, such plan.

"(2) Each plan proposed for implementation under this subsection shall specify—

"(A) from among those portions of navigable waters significantly affected by pollution added from nonpoint sources, each portion and land area contributing such pollution with respect to which the State plans to assist, encourage, or require implementation of best management practices and measures in the first four fiscal years beginning after the date of submission of such plan;

"(B) the order in which, and the schedule under which, the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years;

"(C) from among those categories and subcategories of nonpoint sources of pollution which contribute to each portion specified under subparagraph (A) not meeting applicable water quality standards or the goals and requirements of this Act, the categories and subcategories with respect to which the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years and the relative contribution of such pollution by category and subcategory of such sources;

"(D) the best management practices and measures the implementation of which the State plans to assist, encourage, or require in each of such fiscal years to reduce pollution resulting from nonpoint sources and to improve water quality;

"(E) the methods, by category and subcategory of such sources of pollution, (including, but not limited to, demonstration, enforcement, technical assistance, education, training, and cost-sharing programs) which the State plans to use to encourage, assist, or require implementation of such practices and measures in such fiscal years; and

"(F) sources of Federal and other assistance (other than assistance provided under subsection (i)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

"(3) Each plan submitted by a State under this subsection shall be accompanied by a certification of the attorney general of the State or the chief attorney of any State water pollution control agency which has independent legal counsel that the laws of the State provide adequate authority to implement such plan or, if there is not such adequate authority, a list of such additional authority which will be necessary to implement such plan.

"(4) The schedule required by paragraph (2)(B) shall establish for each category and subcategory of nonpoint sources of pollution specified under paragraph (2)(C) an expeditious time period for implementation of best management practices and measures specified under paragraph (2)(D) and shall indicate the estimated dates for implementation of such practices and measures.

"(5) In developing and implementing a plan under this subsection, a State shall, to the maximum extent practicable, utilize local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

"(6) A State shall, to the maximum extent practicable, develop and implement a plan under this subsection on a watershed-by-watershed basis.

"(c)(1) Any report required by subsection (a) and any plan and report required by subsection (b) shall be submitted to the Administrator during the 270-day period beginning on the date of enactment of this section; except that upon request of the Governor, the Administrator shall extend such period for not to exceed an additional 270 days.

"(2) If a Governor of a State does not submit the report required by subsection (a) during such period, the Administrator shall prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a).

"(d) The Administrator shall consolidate recommendations for modifications of activities and programs submitted by the States under subsection (b)(1)(B) and submit such consolidated recommendations to the appropriate departments, agencies, and instrumentalities of the United States. Each such department, agency, or instrumentality, to the maximum extent practicable and consistent with existing law, shall accommodate such recommendations and shall carry out its own activities and programs in a manner which is consistent with, and will assist implementation of, the plan submitted by the State under subsection (b) and approved by the Administrator under this section.

"(e)(1) Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or plan under this section (other than subsections (i) and (j)), the Administrator shall either approve or disapprove such report or plan, as the case may be. The Administrator may approve a portion of a plan under this subsection. If the Administrator does not disapprove a report, plan, or portion of a plan in such 180-day period, such report, plan, or portion shall be deemed approved for purposes of this section.

"(2) If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that a plan submitted under subsection (b) or any portion thereof is not likely to satisfy, in whole or in part, the goals and requirements of this Act, that adequate authority does not exist, or adequate resources are not available, to implement such plan or portion, that the schedule for implementing such plan or portion is not sufficiently expeditious, or that the practices and measures proposed in such plan or portion are not adequate to improve the quality of navigable waters in the State and to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources, the Administrator shall disapprove the plan or portion thereof with respect to which the Administrator makes such determination. The Administrator shall notify the State of such disapproval and request specific revisions of such plan or portion necessary to obtain approval of such plan or portion. Not later than 90 days after the date of such notification, the State shall submit to the Administrator for his approval under this subsection its revisions of such plan or portion.

"(f) If a State fails to submit a plan under subsection (b) or the Administrator does not approve such a plan, a local public agency or organization which has expertise in, and authority to, control pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a plan which is described in subsection (b) and meets the requirements of subsection (e). After development of such plan, such agency or organization shall submit such plan to the Administrator for his approval. If the Administrator approves such plan, such agency or organization shall be eligible to receive financial assistance under subsection (i) for implementation of such plan as if such agency or organization were a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (i).

"(g) Upon request of a State, the Administrator may provide technical assistance to such State in developing a plan under subsection (b) for those portions of the navigable waters requested by such State.

"(h)(1) If any portion of the navigable waters in any State which is implementing a plan approved under this section is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute pollution resulting from nonpoint sources to such portion. If, on the basis of information available to him, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such

States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the quality of such portion.

"(2) Each State which contributes significant pollution from nonpoint sources to the portion of navigable waters in amounts which contribute to such portion not meeting applicable water quality standards or the goals and requirements of this Act shall submit to the Administrator for his approval a plan referred to in subsection (b) to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion; except that if such State has an approved plan under subsection (b), such State shall revise such plan to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion and submit such revised plan to the Administrator for his approval under this section. Such plan or revised plan shall be consistent with existing Federal and State law. After approval, the State shall implement such plan or revised plan.

"(i)(1) Upon application of a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting the State in implementing such plan.

"(2) An application for a grant under this subsection in any fiscal year shall be in such form and shall contain—

"(A) an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant; and

"(B) such other information as the Administrator may require.

"(3)(A) The Federal share of the cost of each plan implemented with Federal assistance under this subsection in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such plan; except that the Federal share of those costs of any such plan which are attributable to a watershed area with respect to which the Administrator determines that a significant number of non-Federal, non-State interests of such area are willing and able to enter into agreements to participate in such year in nonpoint source pollution control measures under such plan shall be not less than 50 percent and not more than 60 percent.

"(B) For purposes of this paragraph, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

"(4) No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.

"(5)(A) Each State which receives a grant under this subsection in any fiscal year shall submit to the Administrator a written report which describes the activities and programs carried out in the State under such grant and the progress made by such State in meeting the schedule specified under subsection (b)(2)(B).

"(B) No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2)(B).

"(6) Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

"(7) For each fiscal year beginning after September 30, 1986, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to any State which has included effective regulatory mechanisms in an approved State plan under this section and has implemented such mechanisms in the preceding fiscal year. Such mechanisms shall include, but are not limited to, deadlines for implementation of best management practices and enforcement procedures to ensure implementation of such plan.

"(8) There is authorized to be appropriated to carry out this subsection not to exceed $150,000,000 per fiscal year for the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989. Sums appropriated to carry out this subsection shall remain available until expended.

"(j)(1) Not later than January 1, 1985, and each January 1 thereafter the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

"(2) Not later than January 1, 1988, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall include—

"(A) an analysis of the effectiveness of plans carried out under this section and of the best management practices and measures utilized under those plans in controlling nonpoint sources of pollution;

"(B) an analysis of the level of State participation in implementing such plans; and

"(C) recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources.

"(k) Not less than 5 percent of the funds appropriated to carry out subsection (i) for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.".

(b) Section 304(k)(1) of the Federal Water Pollution Control Act is amended by inserting "and 319" after "208".

### POLICY FOR CONTROL OF NONPOINT SOURCES OF POLLUTION

SEC. 9. Section 101(a) of the Federal Water Pollution Control Act is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and by adding at the end thereof the following:

"(7) it is the national policy that plans for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this act to be met through the control of both point and nonpoint sources of pollution.".

### LAKE RESTORATION GUIDANCE MANUAL

SEC. 10. Section 104(h) of the Federal Water Pollution Control Act is amended by inserting "(1)" after "(h)" and by adding at the end thereof the following:

"(2) The Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of enactment of this paragraph a lake restoration guidance manual establishing procedures to guide future State and local efforts to improve water quality in lakes.".

### ELIGIBLE CATEGORIES OF PROJECTS

SEC. 11. (a) The second sentence of section 201(g)(1) of the Federal Water Pollution Control Act is amended by striking out "appurtenances, and" and inserting in lieu thereof "appurtenances," and by striking out the period and inserting in lieu thereof the following: ", and projects to address water quality problems due to impacts of discharges from combined stormwater and sanitary sewer overflows.".

(b) Section 201(n)(2) of the Federal Water Pollution Control Act is amended by striking out "$200,000,000" and inserting in lieu thereof "$500,000,000". The amendment made by this subsection shall apply to fiscal years beginning after September 30, 1984.

### FEDERAL SHARE

SEC. 12. (a) Section 202(a)(1) of the Federal Water Pollution Control Act is amended by striking out "55 per centum" and inserting in lieu thereof "65 per centum".

(b) The last sentence of section 202(a)(1) of the Federal Water Pollution Control Act is amended—

(1) by inserting after "correction" the first place it appears the following: "or a project to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows"; and

(2) by inserting after "correction" the third place it appears the following: "and project to address such problems".

(c) Section 202(a)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this title has been made to the Administrator before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, such project shall be eligible for grants at 75 per centum of the cost of construction thereof.".

(d) The activated bio-filter feature of the project for treatment works of the city of Little Falls, Minnesota, shall be deemed to be an innovative wastewater process and technique for purposes of section 202(a)(2) of the Federal Water Pollution Control Act and the amount of any grant under such Act for such feature shall be 85 per centum of the cost thereof.

(e) Section 202(a)(3) of the Federal Water Pollution Control Act is amended by inserting at the end thereof the following: "In addition, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of biodisc equipment (rotating biological contractors) in any publicly owned treatment works if the Administrator finds that such equipment has not met design performance specifications, unless such failure is attributable to negligence on the part of any person, and if such failure has significantly increased capital or operating and maintenance expenditures.".

### AGREEMENT ON ELIGIBLE COSTS

SEC. 13. Section 203(a) of the Federal Water Pollution Control Act is amended by inserting after the second sentence the following new sentences: "Before taking final action on such plans, specifications, and estimates, the Administrator shall enter into a written agreement with the applicant which establishes and specifies which items of the proposed project are eligible for Federal payments under this section. The Administrator may not refuse to make payments for the Federal share of those costs of any item specified in such an agreement which are incurred on such project.".

### GRANT CONDITIONS

SEC. 14. (a) Section 204(a)(1) of the Federal Water Pollution Control Act is amended to read as follows:

"(1) that any required areawide waste treatment management plan under section 208 of this Act (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being made toward its implementation and the proposed treatment works will be included in such plan;".

(b) Section 204(a)(2) of the Federal Water Pollution Control Act is amended to read as follows:

"(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 303(e) of this Act and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with section 305(b) of this Act;".

(c) The amendments made by subsections (a) and (b) of this section shall take effect two years after the date of enactment of this Act.

### USER CHARGES ON LOW-INCOME RESIDENTIAL USERS

SEC. 15. Section 204(b)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (A) of this paragraph, if the Administrator determines that such system was adopted after public notice and hearing.".

### ALLOTMENT OF CONSTRUCTION GRANT FUNDS

SEC. 16. (a)(1) Section 205(c)(2) of the Federal Water Pollution Control Act is amended by adding after the first sentence the following: "Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1986, 1987, and 1988 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Water Quality Renewal Act of 1984.".

(2) The third sentence of section 205(c)(2) of the Federal Water Pollution Control Act is amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,".

(b) Section 205(e) of the Federal Water Pollution Control Act is amended by striking out "and 1985" each place it appears and inserting in lieu thereof "1985, 1986, 1987, and 1988" and by striking out "thirty-three one-hundredths of 1 per centum" and inserting in lieu thereof "two-thirds of 1 per centum".

(c)(1) Section 205(g)(1) of the Federal Water Pollution Control Act is amended by striking out "1985" and inserting in lieu thereof "1988".

(2) Section 205(g) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph:

"(3) The Administrator shall reserve each fiscal year beginning after September 30, 1984, $900,000 from the sums available to the State of New York under this subsection for such fiscal year, $900,000 from the sums available to the State of New Jersey under this subsection for such fiscal year, and $200,000 from the sums available to the State of Connecticut under this subsection for such fiscal year. Sums reserved under this paragraph shall be used by the Administrator to make a grant for each such fiscal year to the Interstate Sanitation Commission established by such States by interstate compact to carry out the functions of such Commission under this Act.".

(d) Section 205(i) of the Federal Water Pollution Control Act is amended by striking out "and September 30, 1985" and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".

(e) Section 205(j)(3) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "In giving such priority, the State shall allocate at least 50 percent of the amount granted to such State for a fiscal year under this subsection to regional and interstate public comprehensive planning organizations in such State, except in any fiscal year for which the Administrator and the Governor of such State determine jointly that allocation of at least 50 percent to such organizations will not substantially assist in achieving the goals of this Act.".

(f) Section 205 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(l) One-quarter of one percent of any amount appropriated under section 207 of this Act for any fiscal year beginning after September 30, 1984, shall be reserved by the Administrator for carrying out investigations and audits authorized by this Act of projects for which funds are made available under this title.".

(g)(1) The Administrator of the Environmental Protection Agency (hereinafter in this subsection referred to as the "Administrator") shall make a grant from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal year 1985 to the city of Avalon, California, for improvements to the publicly owned treatment works of such city.

(2) The Administrator shall make a grant of $2,337,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Ohio for fiscal year 1985 to the owners of the Rocky River Wastewater Treatment Plant in Rocky River, Ohio, for reimbursement of such owners for the cost of construction of such plant.

(3) The Administrator shall make grants from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Pennsylvania for fiscal year 1985 to Walker Township, Pennsylvania, for developing a collector system and connecting its wastewater treatment system into the Huntingdon Borough, Pennsylvania, sewage treatment plant, and to Smithfield Township, Pennsylvania, for rehabilitating and extending its collector system.

(4)(A) The Administrator shall make a grant to the Elk Pinch Public Service District, Kanawha County, West Virginia, from funds allotted to the State of West Virginia under section 205 of the Federal Water Pollution Control Act for fiscal years beginning after September 30, 1984. Such grant shall be in such amount, not exceeding $3,000,000, as is necessary to allow such district to maintain the approved user charge of $4.26 per thousand gallons and shall be in addition to the Federal share of eligible costs of such project otherwise allowable.

(B) As a condition to receiving a grant under this paragraph, the Elk Pinch Public Service District shall agree to take necessary steps, including litigation, to recover funds from parties against whom such district has claims for damages relating to the planning, designing, constructing, and financing of such wastewater treatment works. Amounts recovered under the preceding sentence, to the extent such amounts do not exceed the amount of grants made under this paragraph, shall be paid to the Administrator and shall be added to the allotment of the State of West Virginia under section 205 of the Federal Water Pollution Control Act for the first fiscal year following such payment.

(5) Notwithstanding section 201(g)(1) of the Federal Water Pollution Control Act or any other provision of law, the Administrator shall make a grant of $250,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Kentucky for fiscal year 1985 to the city of Taylor Mill, Kentucky, for the repair and reconstruction, as necessary, of the publicly owned treatment works of such city.

(6) The Administrator shall made a grant of $27,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal years beginning after September 30, 1984, to the city of Watsonville, California, for improvements to the wastewater treatment and disposal facilities of such city.

### GRANTS TO STATES FOR ESTABLISHMENT OF WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 17. (a) Title II of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new section:

### "GRANTS TO STATES FOR REVOLVING FUNDS

"Sec. 220. (a) The Administrator shall make a grant to each State of the funds allotted to such State under this section for any fiscal year for deposit in a Water Pollution Control Revolving Fund established by such State under subsection (b)(2) of this section, for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works (as defined in section 212 of this Act) which are publicly owned.

"(b)(1) A grant shall not be made for a fiscal year to a State under this section unless the State has first deposited in the fund established by such State under this section an amount equal to 20 percent of the amount allotted to such State for such fiscal year.

"(2) Each State shall submit to the Administrator annually a certification—

"(A) that upon completion of any project for treatment works for which financial assistance is made available under this section, discharges from such treatment works will meet all applicable requirements necessary to achieve applicable State and Federal water quality standards; and

"(B) that such State will comply with all provisions of this section.

"(3) Each State shall establish a Water Pollution Control Revolving Fund to provide assistance under this section. Such State shall deposit in such fund any Federal funds allotted to such State under this section, any amounts received by such State for repayment of loans made by such State with amounts in such fund, any amounts required to be deposited in such fund under subsection (b)(1), and any additional funds (except for funds received under any other section of this title) which such State wishes to deposit in such fund.

"(c)(1) A State may use amounts in the fund established by such State under this section only to make loans, loan guarantees, payments to reduce interest on loans and loan guarantees, bond interest subsidies, and bond guarantees to municipalities and intermuncipal and interstate agencies.

"(2) In addition, to the extent provided by state law, any State may issue revenue or general obligation bonds using amounts in the fund established by such State under this section as a source of revenue or security for the payment of interest and principal on such bonds, if the proceeds of the sale of such bonds are deposited in such fund. No municipality or intermunicipal or interstate agency shall receive a loan from the fund unless such municipality or agency establishes a dedicated source of revenue for the repayment of such loan.

"(3) A State may provide assistance under this section to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Administrator under any other section of this title.

"(4) A State may provide financial assistance from the fund established by such State under this section for any project which is on the State's priority list under section 216 of this Act.

"(d) Notwithstanding any other provision of this section, a State may make assistance available under this section from the fund estasblished by such State under this section to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works. If the recipient of a grant under section 201(g) of this Act for construction of treatment works receives an allowance under section 201(l)(1) for non-Federal funds expended for such planning and preparation and such recipient has received a loan under this first sentence of this subsection, such recipient shall promptly repay such loan to the extent of such allowance.

"(e)(1) Each State shall annually make a full and complete report to the Administrator concerning the use of Federal funds made available under this section in such manner as the Administrator shall prescribe.

"(2) The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted revews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of Federal funds shall be conducted in accordance with the auditing procedures of the General Accounting Office.

"(f) The provisions of this title shall not apply to financial assistance under this section, except to the extent provided in this section.

"(g)(1) There is authorized to be appropriated to carry out this section not to exceed $1,600,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988.

"(2) Sums authorized to be appropriated to carry out this section for any fiscal year shall be allotted by the Administrator in the same manner and in accordance with the same table as if such funds were authorized to be appropriated under section 207 of this Act for such fiscal year. Sums allotted to a State for a fiscal year shall remain available for a grant to such State for the fiscal year for which authorized and for the following fiscal year. Any funds granted to a State for a fiscal year under this section which are not utilized by such State for any of the purposes of this section during such fiscal year and the following fiscal year shall be repaid to the Administrator for reallotment among the other States.".

(b) Section 207 of the Federal Water Pollution Control Act is amended by striking out "and 209" and inserting in lieu thereof ", 209, and 220".

### INNOVATIVE TECHNOLOGY COMPLIANCE DEADLINES FOR DIRECT DISCHARGERS

Sec. 18. Section 301(k) of the Federal Water Pollution Control Act is amended by striking out "July 1, 1987," and inserting in lieu thereof "two years after the date for compliance with such effluent limitation which is otherwise applicable under such subsection,".

### COAL REMINING OPERATIONS

Sec. 19. Section 301 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following:

"(n)(1) Subject to paragraphs (2) and (3) of this subsection, the Administrator, or the State in any case in which the State has an approved permit program under section 402(b), may issue a permit under section 402 which modifies the requirements of subsection (b)(2)(A) of this section with respect to the pH level of any discharge, and with respect to discharges of iron and manganese, from the remined area of any coal remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment. In no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins.

"(2) The Administrator or the State may only issue a permit pursuant to paragraph (1) if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation provides a potential for improvement to water quality.

"(3) For purposes of this subsection—

"(A) the term 'coal remining operation' means a coal mining operation which begins after the date of enactment of this subsection at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977; and

"(B) the term 'remined area' means only that area of any coal remining operation on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

"(4) Nothing in this subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 to any coal remining operation, including the application of such Act to suspended solids.".

### WATER QUALITY CRITERIA

Sec. 20. (a) Section 304(a)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "In developing, publishing, and revising criteria under this paragraph after the date of enactment of this sentence, the Administrator shall consider, among other things, the effects on the ecosystem of (i) water hardness, (ii) pH, (iii) chemical and physical interactions, (iv) persistence of pollutants and the long-term effects of pollutants, (v) sedimentation from chemical reaction of pollutants, (vi) the absorptive properties of sediments, (vii) resuspension, and (viii) biouptake.".

(b) Section 304(a)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "New or revised criteria under this paragraph should be established so as to provide an ample margin of safety to protect human health and fish and wildlife resources. Whenever, in developing new or revised criteria under this paragraph with respect to a pollutant, the Administrator determines that a well-founded and signficant difference of opinion exists as to the latest scientific and research knowledge on the matters referred to in the preceding sentence, the Administrator shall publish a description of such difference of opinion along with the publication of such criteria.".

### PRETREATMENT STANDARDS

Sec. 21. (a) Section 307(b) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph:

"(5)(A) Upon the request of any source which is subject to two or more pretreatment standards which are promulgated under this subsection before the date of enactment of this paragraph and for which more than one compliance date is prescribed, the Administrator may establish a single compliance date for all such standards in accordance with this paragraph. Such a single compliance date shall be not later than one year after the first of such compliance dates, whichever first occurs. The Administrator shall not establish a single compliance date under this paragraph unless the applicant demonstrates to the satisfaction of the Administrator that—

"(i) the establishment of a single compliance date will result in compliance by the applicant with all such standards earlier than would be the case in the absence of such single date; and

"(ii) the technology which is the basis for one of the applicable pretreatment standards is inconsistent with the technology which is the basis for another of the applicable pretreatment standards, or the pretreatment standard with the later compliance date requires sufficient additional technology to justify such single compliance data.

"(B) Any application by a source under this paragraph for a single compliance date shall be made not later than 30 days after the date of enactment of this subparagraph. The Administrator shall provide public notice of such application not later than two weeks after its receipt and shall either approve or deny such application within 60 days after the last day of such two-week period.".

(b) Notwithstanding any other provision of law or rule or regulation to the contrary, the date for compliance with pretreatment standards under section 307(b) of the Federal Water Pollution Control Act for the electroplating point source category, as that category is described at page 9404 of volume 46 of the Federal Register (January 28, 1981), shall be December 31, 1984.

(c) The Administrator of the Environmental Protection Agency shall take such actions as may be necessary to increase the number of employees of such agency in order to effectively implement pretreatment requirements under section 307 of the Federal Water Pollution Control Act.

(d) Section 307 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following:

"(e) In the case of any new or existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 301(k) of this Act, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may establish a date for compliance with the applicable pretreatment standard not later than two years after the date for compliance with such applicable standard (1) if the Administrator determines that (A) the innovative system has the potential for industrywide application, and (B) the action will not cause the publicly owned treatment works to be in violation of its permit under section 402, and (2) if the Administrator (or the State, in any case in which the State has a pretreatment program approved by the Administrator) concurs with the proposed action of the owner or operator of such treatment works under this subsection.".

### CRIMINAL PENALTIES

Sec. 22. Section 309(c) of the Federal Water Pollution Control Act is amended to read as follows:

"(c)(1) Any person who—

"(A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

"(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment of not more than two years, or by both.

"(2) Any person who—

"(A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

"(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or by imprisonment of not more than four years, or by both.

"(3) It shall be an affirmative defense under paragraph (1)(B) and (2)(B) of this subsection that the introduction of any pollutant or hazardous substance into a sewer system or a publicly owned treatment works was in compliance with all applicable Federal, State, and local requirements which govern the introduction of a pollutant or hazardous substance into a sewer of publicly owned treatment works.

"(4) Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both.

"(5) For the purpose of this subsection, the term 'person' means, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

"(6) For the purpose of this subsection, the term 'hazardous substance' means (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".

### ADMINISTRATIVE PENALTIES

Sec. 23. Section 309 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following:

"(g)(1) Whenever on the basis of any information available to him—

"(A) the Administrator finds that any person is in violation of sections 301, 302, 306, 307, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by him or by a State, or

"(B) the Secretary of the Army, acting through the Chief of Engineers (hereinafter referred to as the 'Secretary') finds that any person is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 404 of this Act by a State.

he may, after consultation with the State in which the violation occurs, assess a civil penalty of not more than $10,000 per day of violation, except that such penalty shall not exceed a total of $75,000.

"(2)(A) A civil penalty shall be assessed under this subsection by the Administrator or Secretary, as the case may be, by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator or Secretary, as the case may be, shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's or Secretary's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.

"(B) In determining the amount of a civil penalty, the Administrator or Secretary, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, economic savings (if any) resulting from the violation, and such other matters as justice may require.

"(C) The Administrator or Secretary, as the case may be, may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

"(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition my only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(4) If any person fails to pay an assessment of a civil penalty—

"(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

"(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator or the Secretary, as the case may be,

the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(5) The Administrator or Secretary, as the case may be, shall have the authority to issue subpoenas in connection with hearings under paragraph (2) of this subsection and may request the Attorney General to bring an action to enforce any subpoena under this subsection. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.

"(6) Action taken by the Administrator or Secretary, as the case may be, pursuant to this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act, except that any violation with respect to which a civil penalty is imposed under this subsection shall not be subject to a civil penalty under section 309(d) or section 311(b) of this Act.

"(7) When a State has proceeded with an enforcement action relating to a violation with respect to which the Administrator or the Secretary is authorized to assess a civil penalty under this subsection, the Administrator and the Secretary are not authorized to take any action under this subsection if the State demonstrates that the State imposed penalty is appropriate. ".

### CLEAN LAKES

SEC. 24. (a) Section 314(a)(1) of the Federal Water Pollution Control Act is amended by striking out "fresh water".

(b) Section 314 of the Federal Water Pollution Control Act is amended—

(1) in subsection (b), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (a) of this section";

(2) in subsection (c)(1), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section"; and

(3) in subsection (c)(2), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section".

(c) Section 314 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:

"(d)(1) The Administrator shall make grants to States for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The Administrator shall provide an equitable distribution of such sums to the States.

"(2) The amount granted to a State for a project under this subsection shall not exceed 70 per centum of the cost of such project.

"(3) There is authorized to be appropriated to carry out this subsection not to exceed $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989. Sums appropriated shall remain available until expended.

"(e)(1) Any State may prepare, and submit to the Administrator for his approval—

"(A) a survey of water quality deterioration in lakes and others waters in such State which has resulted from high acidity which may be due to acid deposition, and

"(B) methods and procedures which may be applied to lakes and other waters in such State to restore water quality, insofar as such quality has deteriorated as a result of high acidity which may be due to acid deposition.

"(2)(A) The Administrator shall make grants to States to carry out methods and procedures approved by the Administrator under this subsection. Such methods may include, but are not limited to, (i) innovative methods of neutralizing and restoring buffering capacity of lakes and other waters that have become so acidic as to endanger game fish species, and (ii) methods of removing from lakes and other bodies of water toxic metals and other toxic substances mobilized by high acidity.

"(B) The amount granted under this section to any State for any fiscal year shall not exceed 80 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under this subsection.

"(C) The Administrator shall provide for an equitable distribution of sums appropriated under this subsection among States with approved methods and procedures. Such distribution shall be based on the relative need of each such State for the restoration of water quality which has deteriorated as a result of high acidity which may be due to acid deposition. The amount of any grant to a State under this subsection shall be in addition to, and not in lieu of, any other Federal financial assistance.

"(3) There is authorized to be appropriated to carry out this subsection $25,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989. Amounts appropriated under this subsection shall remain available until expended.

"(f) The Administrator shall submit annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status and trend of water quality in lakes in the United States, including but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

"(g) The Administrator shall, in cooperation with the State of Texas, study water quality problems in Lake Houston, Houston, Texas, and undertake such control measures as the Administrator and State determine are necessary to improve water quality. Such study shall include, but not be limited to, the evaluation of the feasibility of regional or consolidated waste treatment facilities and the development of recommendations for the cost-effective control of pollutants entering the Lake Houston watershed. The Administrator shall submit a report of such study and identify such structural or nonstructural controls which were undertaken or are proposed, along with recommendations for further measures, to improve the water quality of Lake Houston, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of enactment of this subsection. There is authorized to be appropriated for fiscal years beginning after September 30, 1984, $10,000,000 to carry out this subsection, to remain available until expended.

"(h) The Administrator, in cooperation with the Secretary of the Army, acting through the Chief of Engineers, and in consultation with appropriate State and local agencies, shall conduct a one-year comprehensive study of the Beaver Lake, Arkansas, to identify measures which will optimize achievement of the purposes for which Beaver Dam was constructed while preserving and enhancing the quality of the reservoir's water. Upon completion of the study the Administrator shall undertake a demonstration project at Beaver Lake to determine the effectiveness of measures identified in such study for preserving and enhancing the quality of the reservoir's water for current and future users. Upon completion of the demonstration project the Administrator shall submit a report of such study and project, along with recommendations for further measures to improve the water quality of Beaver Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. Funds appropriated under subsections (c), (d) and (e) of this section and section 52 of the Water Quality Renewal Act of 1984 shall be available to carry out this subsection.

"(i) The Administrator shall undertake a demonstration project for the removal of silt, stumps, and other obstructions from Greenwood Lake and Belcher Creek, New Jersey. Upon completion of the demonstration project the Administrator shall submit a report of such project, along with recommendations for further measures to improve the water quality of Greenwood Lake and Belcher Creek, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. There is authorized to be appropriated $10,000,000 to carry out this subsection.

"(j) The Administrator shall undertake a demonstration project for the removal of silt and stumps from, and the control of pollution from nonpoint sources in, Deal Lake, Monmouth County, New Jersey. Upon completion of the demonstration project, the Administrator shall submit a report of such project, along with recommendations for further measures to improve the water quality of Deal Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. There is authorized to be appropriated $8,000,000 to carry out this subsection.

"(k) The Administrator shall undertake a demonstration project for the restoration of Alcyon Lake, New Jersey, including removal and disposal of contaminated sediments in the lake. Upon completion of the demonstration project, the Administrator shall submit a report of such project, along with recommendations of further measures to improve the water quality of Alcyon Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. There is authorized to be appropriated $3,500,000 to carry out this subsection.".

### NPDES PERMITS

SEC. 25. (a)(1) Section 402(b)(1)(B) of the Federal Water Pollution Control Act is amended to read as follows:

"(B) are for fixed terms not exceeding ten years, except in the case of a permit which modifies any requirement of this Act under section 301(c), (g), (h), or (m) of this Act and except in any case in which the State determines that the applicant has not consistently complied with any permit held by such applicant under this section, in which cases such permits shall be issued for fixed terms not exceeding five years;".

(2) Section 402(b)(1) of the Federal Water Pollution Control Act is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following:

"(D) must be modified promptly to insure compliance with any new or revised effluent limitation under section 307(a) of this Act or any new or revised requirement pursuant to a standard under section 303 of this Act which limitation or requirement is more stringent than the existing effluent limitation or requirement in the permit or which controls a pollutant not controlled in the permit; and".

(b) Section 402(l) of the Federal Water Pollution Control Act is amended by inserting "(1)" after "(l)" and by adding at the end thereof the following new paragraph:

"(2) The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require such a permit, for discharges of stormwater runoff from mining operations or oil or gas exploration, production, processing, or treatment operations, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated with process wastes, overburden, raw materials, toxic pollutants above natural background levels, spilled product, hazardous substances or oil or grease. Any person discharging stormwater runoff described in the preceding sentence shall monitor the quality of water in such flows and shall report not less often than annually to the Administrator on the results of such monitoring.".

(c) Section 402 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:

"(m) To the extent a treatment works (as defined in section 212 of this Act) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a discharger of conventional pollutants identified pursuant to section 304(a)(4) of this Act which are introduced into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

"(n)(1) The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

"(2) A partial permit program under this subsection shall cover at a minimum administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).

"(3) The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if—

"(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

"(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b).

"(4) The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if—

"(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b); and

"(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than five years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.".

(d)(1) Section 402(c)(1) of the Federal Water Pollution Control Act is amended by striking out "as to those navigable waters" and inserting in lieu thereof "as to those discharges".

(2) Section 402(c) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph:

"(4) A State may return administration of its permit program to the Administrator, and the Administrator may withdraw approval of a State permit program under paragraph (3) of this subsection (A) in the case of any approval under subsection (n)(3), the entire permit program being administered by the State department or agency at the time of such return or withdrawal, as the case may be, or (B) in the case of any approval under subsection (n)(4), any phased component approved at the time of such return or withdrawal, as the case may be.".

### AGRICULTURAL STORMWATER DISCHARGES

Sec. 26. Section 502(14) of the Federal Water Pollution Control Act is amended by inserting after "include" in the last sentence thereof the following: "agricultural stormwater discharges and".

### NEWTOWN CREEK, NEW YORK

Sec. 27. The Administrator is authorized to make a grant to the city of New York to install such additional facilities in, and make such modifications to, the Newtown Creek sewage treatment plant as are necessary for the plant to provide secondary treatment. The Federal share of such project shall be 75 percent of the cost of installing such facilities and making such modifications. There is authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years beginning after September 30, 1984, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

### SAN DIEGO, CALIFORNIA

Sec. 28. (a) For purposes of protecting the economy, public health, environment, surface water and public beaches, and water quality of the city of San Diego, California, and surrounding areas, which are endangered and are being polluted by raw sewage emanating from the city of Tijuana, Mexico, upon application of the city of San Diego, the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") shall make grants to such city for construction of a project consisting of—

(1) a publicly owned treatment works in such city to provide primary or more advanced treatment of not less than 60,000,000 gallons of municipal sewage and industrial waste per day for the city of Tijuana, Mexico; and

(2) a publicly owned treatment works in such city to provide primary or more advanced treatment of such amount of municipal sewage and industrial waste per day for such city of San Diego as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

(b) Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the city of San Diego and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

(c) The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the cities of Tijuana and San Diego.

(d) All provisions of the Federal Water Pollution Control Act which are applicable to grants made under section 201(g) of such Act shall apply to grants made under this section to provide treatment of municipal sewage and industrial waste for the city of San Diego.

(e) The Federal share of the cost of construction of the treatment works to provide treatment of municipal sewage and industrial waste for the city of Tijuana shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

(f) Upon application of the city of San Diego, the Administrator may issue a permit under section 402 of the Federal Water Pollution Control Act which modifies the requirements of section 301(b)(1)(B) of such Act to permit the discharge of pollutants for any ocean outfall constructed with Federal assistance under this Act if such pollutants have received primary or more advanced treatment. Any permit issued pursuant to this subsection shall not be effective after December 31, 1993.

(g) If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste for the city of Tijuana has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the city of San Diego.

(h) For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(i) There is authorized to be appropriated to the Administrator to make grants under this section for fiscal years beginning after September 30, 1984, such sums as may be necessary.

### NACO, ARIZONA

SEC. 29. (a) For purposes of protecting the economy, public health, environment, and surface water and groundwater of the community of Naco, Arizona, which are in danger and are being polluted by raw sewage emanating from the city of Naco, Sonora, Mexico, upon application of the county of Cochise, Arizona, the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") shall make grants to such county for construction of a project consisting of—

(1) a publicly owned treatment works in such community of Naco, Arizona, to provide primary or more advanced treatment of not less than 150,000 gallons of untreated sewage emanating from the city of Naco, Sonora, Mexico; and

(2) a publicly owned treatment works in such community of Naco, Arizona, to provide primary or more advanced treatment of such amount of municipal sewage and industrial waste per day for such community of Naco, Arizona, as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

(b) Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the County of Cochise, Arizona, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

(c) The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the city of Naco, Sonora, Mexico and the community of Naco, Arizona.

(d) All provisions of the Federal Water Pollution Control Act which are applicable to grants made under section 201(g) of such Act shall apply to grants made under this section to provide treatment of municipal sewage and industrial waste for the community of Naco, Arizona.

(e) The Federal share of the cost of construction of the treatment works to provide treatment of municipal sewage and industrial waste for the city of Naco, Sonora, Mexico shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

(f) If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste for the city of Naco, Sonora, Mexico, has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the community of Naco, Arizona.

(g) For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

(h) There is authorized to be appropriated to the Administrator $2,000,000 to make grants under this section for fiscal years beginning after September 30, 1984.

### LIMITATION ON DISCHARGE OF RAW SEWAGE

SEC. 30. (a) After March 15, 1986, the city of New York shall not discharge raw sewage into navigable waters in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily discharge of raw sewage by the city of New York during the 12-month period preceding March 15, 1986 (as determined by the Administrator of the Environmental Protection Agency), except as provided in subsection (b) of this section.

(b) In the event of any significant interruption in the operation of a wastewater treatment plant which is operated by the city of New York, the Administrator of the Environmental Protection Agency may waive the limitations of subsection (a), but only to such extent and for such limited period of time as may be reasonably necessary for such city to resume such operation.

(c) The Administrator of the Environmental Protection Agency shall undertake measures, including modifications of schedules of compliance, to reduce and eliminate at the earliest practicable date, the discharge of raw sewage by the city of New York taking into account any increase in the authorization for grants for construction of treatment works made by this Act and standards and practices which are necessary for the attainment of that water quality which assures protection of public water supplies, protection of the public health, and the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water.

### JEFFERSON COUNTY, KENTUCKY

Sec. 31. The Okolona Sewer Construction District, Jefferson County, Kentucky, shall be permitted to operate the Okolona Sewer Construction District Treatment Works and shall not be required to use any other facility for wastewater treatment, until such time as the West County Wastewater Treatment Plant, Jefferson County, Kentucky, is completed. The Administrator shall issue a permit under section 402 of the Federal Water Pollution Control Act to carry out this section.

### BOSTON, MASSACHUSETTS

Sec. 32. The Administrator of the Environmental Protection Agency is authorized and directed to make grants to the Metropolitan District Commission, Massachusetts, for a project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts. The Federal share of such project shall not exceed 75 percent of the cost of carrying out such improvements. There is authorized to be appropriated to carry out this section $10,000,000 per fiscal year for each of the fiscal years 1985, 1986, and 1987.

### OAKWOOD BEACH AND RED HOOK PROJECTS, NEW YORK

Sec. 33. Notwithstanding any provision of the Federal Water Pollution Control Act, the Administrator of the Environmental Protection Agency shall pay, to the extent provided in appropriation Acts, in the same proportion as the Federal share of other project costs, all expenses for the relocation of facilities for the distribution of natural gas with respect to the entire wastewater treatment works known as the Oakwood Beach (EPA Grant Numbered 360392) and Red Hook (EPA Grant Numbered 360394) projects, New York. There is authorized to be appropriated for fiscal years beginning after September 30, 1984, not to exceed $9,000,000 to carry out this section.

### CHIPPEWA TOWNSHIP, PENNSYLVANIA

Sec. 34. In order to protect the public health, environment, and water quality endangered by the destruction of the Chippewa Township, Pennsylvania, sewage treatment facility and the resultant raw sewage discharge into Brady's Run and the Beaver River, Pennsylvania, the Administrator of the Environmental Protection Agency is directed to remove such raw sewage.

### STUDY OF REGULATION OF DE MINIMIS DISCHARGES

Sec. 35. The Administrator of the Environmental Protection Agency shall study the feasibility and desirability of eliminating the regulation of discharges of pollutants into the navigable waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant. The Administrator shall submit a report of such study along with recommendations to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of enactment of this Act.

### STUDY OF EFFECTIVENESS OF INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES

Sec. 36. The Administrator of the Environmental Protection Agency shall study the effectiveness on waste treatment of innovative and alternative wastewater treatment processes and techniques referred to in section 201(g)(5) of the Federal Water Pollution Control Act which have been utilized in treatment works constructed under such Act. In conducting such study, the Administrator shall compile information, by State, on the types of such processes and techniques utilized, on the number of facilities constructed with such processes and techniques, and a description of such processes and techniques which have not performed to design standards. The Administrator shall also determine which States have not obligated the full amount set aside under section 205(i) of such Act for such processes and techniques and the reasons of each such State's failure to make such obligations. The Administrator shall submit a report of such study to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than two years after the date of enactment of this Act, along with recommendations for providing more effective incentives for innovative and alternative wastewater treatment processes and techniques.

### WATER QUALITY IMPROVEMENT STUDY

Sec. 37. (a) The Administrator of the Environmental Protection Agency shall study the water quality improvements which have been achieved by application of best available technology economically achievable pursuant to section 301(b)(2) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the effectiveness of, and the costs and benefits associated with, application of best available technology economically achievable pursuant to such section and an analysis of the effectiveness of the water quality program under such Act and methods of improving such program, including site specific levels of treatment which will achieve the water quality goals of such Act in a cost-effective manner.

(b) Not later than two years after the date of enactment of this Act, the Administrator shall submit a report on the results of the study conducted under subsection (a) together with recommendations for improving the water quality program and its effectiveness to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

### STUDY OF TESTING PROCEDURES

Sec. 38. (a)(1) The Administrator of the Environmental Protection Agency shall study the testing procedures for analysis of pollutants established under section 304(h) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the adequacy and standardization of such procedures. In conducting the analysis of the standardization of such procedures, the Administrator shall consider the extent to which such procedures are consistent with comparable procedures established under other Federal laws.

(2) Not later than one year after the date of enactment of this Act, the Administrator shall submit a report on the results of the study conducted under this subsection, together with recommendations for modifying the test procedures referred to in paragraph (1) to improve their effectiveness, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

(b) Biennially after the date of submission of the report under subsection (a), the Administrator shall conduct a state-of-the-art review of the test procedures for the analysis of pollutants etablished under subsection (a) for the purpose of determining the adequacy and effectiveness of such procedures and shall, based on the results of such review, submit to the committees referred to in subsection (a)(2) recommendations for modifying such procedures to improve their effectiveness.

### STUDY OF PRETREATMENT OF TOXIC POLLUTANTS

Sec. 39. (a) The Administrator of the Environmental Protection Agency shall study—

(1) the adequacy of data on environmental impacts of toxic industrial pollutants discharged through publicly owned treatment works;

(2) the extent to which secondary treatment at publicly owned treatment works removes toxic pollutants;

(3) the capability of publicly owned treatments works to revise pretreatment requirements under section 307(b)(1) of the Federal Water Pollution Control Act;

(4) possible alternative regulatory strategies for protecting the operations of publicly owned treatment works from industrial discharges, including an evaluation of the extent to which each such strategy identified may be expected to achieve the goals of this Act; and

(5) the adequacy of Federal, State, and local resources to establish, implement, and enforce multiple pretreatment limits for toxic pollutants for each alternative strategy identified in paragraph (4).

(b) The Administrator shall, not later than two years after the date of enactment of this Act, submit a report on the results of such study along with recommendations for improving the effectiveness of pretreatment requirements to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.

### SULFIDE CORROSION STUDY

Sec. 40. (a) In order to protect the Federal and other investment in treatment works, the Administrator of the Environmental Protection Agency shall conduct a study of the problem of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate this problem, and the range of available options to deal with the effects.

(b) The study required by this section shall be conducted in consultation with the Los Angeles City and County sanitation agencies which have observed examples of corrosion, probably caused by sulfides. the Administrator shall submit a report on the results of the study, together with recommendations for measures to reduce the corrosion of treatment works, to the Committee on Public Works and Transportation of the House of representatives and the Committee on Environment and Public Works of the Senate within one year of the date of enactment of this Act. There is authorized to be appropriated $2,000,000 to carry out this subsection for fiscal years beginning after September 30, 1984.

### GRANTS FOR ALTERNATIVE WATER SUPPLY TO REPLACE CONTAMINATED GROUNDWATER

Sec. 41. (a) The Administrator of the Environmental Protection Agency is authorized to make grants to (1) any person who owns or operates a public water system which, because of groundwater contamination, is unable to supply water which is fit for human consumption to some or all of the users of such system, and (2) any unit of local government on behalf of individuals residing within the boundaries of such unit whose water is supplied from a source other than a public water system and is unfit for human consumption because of groundwater contamination. Such grants shall be for the purpose of providing alternative water supplies to such users and individuals on a temporary basis and providing permanent remedies for water supply problems resulting from groundwater contamination, including but not limited to the drilling of new wells and the installation of new pipes.

(b) An application under this section shall be in such form and shall contain such information as the Administrator may require. Each such application shall include—

(1) a description of the source and extent of groundwater contamination;

(2) information on the number of people who do not have water available to them because of such contamination; and

(3) a description of the measures the applicant proposes to undertake with the assistance to be provided under this section.

(c) The Federal share of the cost of measures undertaken with assistance under this section shall not exceed 50 percent.

(d) The maximum amount of a grant under this section to any applicant with respect to a particular source of groundwater contamination shall be $2,000,000 for each fiscal year. The maximum amount of grants under this section to applicants within one State shall be $10,000,000 for each fiscal year.

(e) The Administrator shall report annually to Congress on grants made under this section. Each such report shall include—

(1) infomation on applicants for such grants, including the number of such applicants;

(2) information on the sources and extent of groundwater contamination with respect to which applications are made under this section, including the average number of people affected by each source of groundwater contamination; and

(3) the average amount of such grants and the types of measures undertaken with such grants.

(f) For purposes of this section—

(1) the term "person" includes a State, a political subdivision of a State, and an agency or instrumentality of a State or political subdivision of a State;

(2) the term "public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals; and

(3) the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas.

(g) There is authorized to be appropriated to carry out this section not to exceed $150,000,000 per fiscal year for each of the fiscal years 1985, 1986, and 1987.

### DES MOINES, IOWA

Sec. 42. The Administrator of the Environmental Protection Agency is authorized to make a grant to the city of Des Moines, Iowa, for construction of the Central Sewage Treatment Plant component of the

Des Moines, Iowa, metropolitan area project. The Federal share of such project shall be 75 percent of the cost of construction. There is authorized to be appropriated to carry out this section not to exceed $85,000,000 for fiscal years beginning after September 30, 1984, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

### WASTEWATER RECLAMATION DEMONSTRATION

Sec. 43. The Administrator of the Environmental Protection Agency is authorized to make a grant to the San Diego Water Reclamation Agency, California, to demonstrate and field test for public use innovative processes which advance the technology of wastewater reclamation and which promote the use of reclaimed wastewater. There is authorized to be appropriated not to exceed $3,000,000 to carry out this section for fiscal years beginning after September 30, 1984.

### DISCHARGES INTO MARINE WATERS

Sec. 44. (a) Section 301(h)(2) of the Federal Water Pollution Control Act is amended by striking out "such modified requirements will not interfere" and inserting in lieu thereof the following: "the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources,".

(b) Section 301(h)(3) of the Federal Water Pollution Control Act is amended by inserting before the semicolon at the end thereof the following: ", and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge".

(c) Section 301(h) of the Federal Water Pollution Control Act is amended by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively, and by inserting after paragraph (5) the following new paragraph:

"(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;".

(d) Section 301(h) of the Federal Water Pollution Control Act is amended by striking out the period at the end of paragraph (8) (as redesignated by subsection (b) of this section) and inserting in lieu thereof a semicolon and by adding after paragraph (8) (as so redesignated) the following new paragraphs:

"(9) no effluent will be discharged from such works which does not receive primary treatment by screening, sedimentation, and skimming, and treatment for disinfection where necessary, and which does not meet the criteria established under section 304(a)(1) after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged; and

"(10) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is an applicable pretreatment requirement in effect, the Administrator shall grant to the applicant removal credits to reflect the consistent removal of that pollutant achieved by the treatment works, provided that the following criteria are met:

"(A) there exists an effluent limitation on the treatment works for the pollutant and the revised requirement will not result in the effluent violating such effluent limitations;

"(B) the revised requirement will not result in interference with the method of disposal or reuse of sludge from the treatment works;

"(C) the revised requirements will not result in a pollutant interfering with the operation of such treatment works; and

"(D) all other criteria of this subsection are met.".

(e) Section 301(h) of the Federal Water Pollution Control Act is amended by striking out the second sentence and inserting in lieu thereof the following: "For the purposes of this subsection, the phrase 'the discharge of any pollutant into marine waters' refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone.".

(f) The amendments made by this section shall not apply to any person whose application for a permit under section 301(h) of the Federal Water Pollution Control Act has been tentatively or finally approved by the Administrator of the Environmental Protection Agency on or before the date of enactment of this Act.

### MAINTENANCE OF WATER QUALITY IN ESTUARIES

Sec. 45. (a)(1) In any case where the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") determines, on his own initiative or upon request of one or more States any portion of which is located within the estuarine zone of an estuary, that the attainment or maintenance of that water quality in such estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water, requires the control of point and nonpoint sources of pollution in more than one State, the Administrator shall convene a management conference. The members of such conference shall include the Administrator, the Administrator of the National Oceanic and Atmospheric Administration, a representative of each of those States which are located, in whole or in part, within the estuarine zone of the estuary for which the conference is convened, a representative of each interested Federal agency as determined appropriate by the Administrator, a representative of any interstate agency having jurisdiction over all or a significant part of the estuary, and representatives of local governments within the estuarine zone as deemed appropriate by the Administrator. In any case in which an interstate agency has jurisdiction over all or a significant part of the estuary, such agency shall be the lead agency for purposes of carrying out this section. The Administrator shall give priority consideration under this section to Long Island Sound; Buzzards Bay, Massachusetts; Delaware Bay, Delaware and New Jersey; and Albemarle Sound, North Carolina.

(2) In any case in which a boundary be-

tween two States passes through an estuary and such boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management conference with respect to such estuary before a final adjudication has been made of such dispute.

(3) Notwithstanding any other provision of this section, the Administrator shall not convene a management conference with respect to an estuary if he determines that there exists a management program for the estuarine zone of such estuary with sufficient authority to achieve the purposes of this section.

(b) The purposes of any management conference convened with respect to an estuary under subsection (a) shall be—

(1) to develop a comprehensive master plan for such estuary;

(2) to coordinate the implementation of the master plan by the States participating in the conferences;

(3) to recommend priority corrective actions and compliance schedules to address point and nonpoint sources of pollution posing the most serious problems; and

(4) to monitor the estuary to determine the effectiveness of actions taken pursuant to the master plan.

(c) The master plan developed pursuant to paragraph (1) of subsection (b) may include, but need not be limited to any of the following standards and practices which are necessary for the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water:

(1) development of water quality standards for waters within the estuarine zone;

(2) development of toxicity-based standards for toxic pollutants;

(3) development of water quality based effluent standards for significant point sources of pollution; and

(4) development of best management practices to control nonpoint sources of pollution.

In developing a master plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, or local agencies.

(d) A management conference convened under this section shall be convened for at least five years. Such conference may be extended by the Administrator, and if terminated after the initial five-year period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

(e) For purposes of this section, the terms "estuary" and "estuarine zone" have the meanings such terms have in section 104(n)(4) of the Federal Water Pollution Control Act, except that the term "estuarine zone" shall also include those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher. For purposes of this section, the term "State" has the meaning such term has in section 502(3) of such Act.

(f) The Administrator is authorized to make grants to States and interstate agencies participating in a management conference which has adopted a comprehensive master plan pursuant to this section for the estuary which is the subject of such conference. The amount of the grants to any State or interstate agency for a fiscal year shall, subject to such amounts as are provided in appropriation Acts, be equal to 50 per centum of that State's or agency's cost of implementing the master plan for such fiscal year. There is authorized to be appropriated to carry out this subsection not to exceed $10,000,000 for the fiscal year ending September 30, 1984; not to exceed $30,000,000 for the fiscal year ending September 30, 1985; not to exceed $50,000,000 for the fiscal year ending September 30, 1986; not to exceed $75,000,000 for the fiscal year ending September 30, 1987; and not to exceed $75,000,000 for the fiscal year ending September 30, 1988. Amounts appropriated under this subsection shall remain available until expended.

(g) There is authorized to be appropriated to the Administrator not to exceed $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988, for—

(1) expenses related to the administration of management conferences under this section;

(2) grants to State water pollution control agencies, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals for research, surveys, studies, and modeling and other technical work necessary for the development of comprehensive master plan under this section; and

(3) monitoring the implementation of a comprehensive master plan by the management conference or by the Administrator in any case in which the conference has been terminated.

### CHESAPEAKE AND NARRAGANSETT BAYS

Sec. 46. (a)(1) The Administrator of the Environmental Protection Agency (hereinafter in this section and sections 47 and 48 referred to as the "Administrator") shall continue the Chesapeake Bay program and shall establish and maintain in the Environmental Protection Agency an office, division, or branch of Chesapeake Bay Programs to—

(A) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the Chesapeake Bay (hereinafter in this subsection referred to as the "Bay");

(B) coordinate Federal and State efforts to improve the quality of the Bay;

(C) determine the impact of sediment deposition in the Bay and identify the sources, rates, routes, and distribution patterns of such sediment deposition; and

(D) determine the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals, and with special attention given to the impact of such changes on striped bass.

(2)(A) The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay program (hereinafter in this subsection referred to as the "plan"), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of enactment of this section, approved and committed to implement all or substantially all aspects of the plan. Payments for such purpose may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.

(B) A State or combination of States, may elect to avail itself of the benefits of this paragraph by submitting to the Administrator a plan including the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of the Federal Water Pollution Control Act and will contribute to the achievement of the national goals set forth in such section, he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this paragraph shall not exceed 50 percent of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

(C) Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or projects supported by funds made available under this paragraph shall not exceed in any one fiscal year 10 percent of the annual Federal grant made to a State under this paragraph.

(3) Any State or combination of States that receives a grant under paragraph (2) shall, within 18 months after the date of receipt of such grant and biennially thereafter, report to the Administrator on the progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay program. The Administrator shall transmit each such report along with the comments of the Administrator on such report to Congress.

(b)(1) The Administrator shall, at the request of the Governor of an affected State and after consultation with the Administrator of the National Oceanic and Atmospheric Administration and other appropriate Federal and State agencies and interested persons, make a grant for purposes of assessing the principal factors having an adverse effect on the environmental quality of the Narragansett Bay (hereinafter in this subsection referred to as the "Bay"), as perceived by both scientists and users, in conjunction with developing and implementing a management program to improve the Bay's water quality. Payments for such purposes may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate. Federal grants under this paragraph shall not exceed 50 percent of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

**(2) A State may elect to avail itself of the benefits of this subsection by submitting to the Administrator a full and complete description of the program it proposes to establish and administer under State law. The Administrator shall approve each such submitted program, within three months of receipt of such program, if the applicant demonstrates to the satisfaction of the Administrator that the applicant will—**

**(A) establish a committee of representatives from various units of Federal, State, and local governments, research and educational institutions, and concerned groups and individuals on the Bay to provide advice on the design and implementation of a management program and to coordinate communication on issues affecting the Bay's water quality;**

**(B) review and coordinate Federal and State water pollution abatement efforts that will most efficiently address those principal factors having an adverse effect on the Bay's water quality; and**

**(C) undertake, subsequent to an analysis of all environmental sampling data presently being collected on the Narragansett Bay, methods for improving such data collection, particularly with respect to toxic pollutants; establish a continuing capacity for collecting, storing, analyzing, and disseminating such data; institute a sampling program where deficiencies are found to exist in present sampling programs; and develop and, as soon as practicable but not later than three years after the date of enactment of this section, implement management practices and measures (including land use requirements) to reduce to the greatest extent feasible pollutant loadings in the Bay and to improve the Bay's water quality.**

**(3) Any State that avails itself to the benefits of this subsection shall, not later than two years after receipt of a Federal grant under this subsection and annually thereafter, report to the Administrator on progress made in implementing a management program to improve the water quality of Narragansett Bay.**

**(c) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:**

**(1) $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988, to carry out subsection (a)(1);**

**(2) $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988 for grants to States under subsection (a)(2); and**

**(3) $1,500,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988 to carry out subsection (b).**

### NEW YORK AND NEW JERSEY HARBOR AREA

SEC. 47. (a)(1) The Administrator shall—

(A) collect and make available, through publications and other appropriate means, information pertaining to the environmental quality of the New York and New Jersey Harbor area (hereinafter in this subsection referred to as the "Harbor");

(B) coordinate Federal and State efforts to improve the water quality of the Harbor; and

(C) determine the impact of natural and man-induced environmental changes on the living resources of the Harbor and on adjacent coastal areas and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings of sewage, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals.

**(2)(A) The Administrator shall, at the request of the Governor of a State affected by any interstate management plan relating to the Harbor developed pursuant to section 45 of this Act (hereinafter in this subsection referred to as the "plan"), make a grant for**

the purpose of implementing the management mechanisms contained in the plan in accordance with such section.

(B) An affected State or combination of States may, in addition, submit to the Administrator a plan including the estimated cost of the abatement actions propored to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of the Federal Water Pollution Control Act and will contribute to the achievement of the national goals set forth in such section, he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this paragraph shall not exceed 50 percent of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.

(C) Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or projects supported by funds made available under this paragraph shall not exceed in any one fiscal year 10 percent of the annual Federal grant made to a State under this paragraph.

(3) Any State or combination of States that receives a grant under section 45 of this Act or subparagraph (B) of paragraph (2) shall, within 18 months after the date of receipt of such grant and biennially thereafter, report to the Administrator on the progress made in implementing the plan developed pursuant to such section 45 or subparagraph (B) of paragraph (2). The Administrator shall transmit each such report along with the comments of the Administrator on such report to Congress.

(b) There is authorized to be appropriated $10,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988 to carry out subsection (a) of this section.

### GREAT LAKES CONSUMPTIVE USES STUDY

SEC. 48. (a) In recognition of the serious impacts that are expected to occur to the Great Lakes environment as a result of a projected fivefold increase in consumption of Great Lakes water, incuding loss of wetlands and reduction of fish spawning and habitat areas, as well as serious economic losses to vital Great Lakes industries, and in recognition of the national goal to provide environmental protection and preservation of our natural resources while allowing for continued economic growth, the Administrator, in cooperation with other interested departments, agencies, and instrumentalities of the United States and the eight Great Lakes States and their political subdivisions, is authorized to conduct a study of control measures which can be implemented to reduce the quantity of Great Lakes water consumed without adversely affecting projected economic growth of the Great Lakes region.

(b) The study authorized by this section shall include an analysis of both existing and new technology which is likely to be feasible in the foreseeable future and shall at a minimum include the following:

(1) a review of the methodologies used to forecast Great Lakes consumptive uses, including an analysis of the sensitivity of key variables affecting such uses;

(2) an analysis of the affect that enforcement of provisions of the Federal Water Pollution Control Act relating to thermal discharges has had on consumption of Great Lakes water;

(3) an analysis of the affect of laws, regulations, and national policy objectives on consumptive uses of Great Lakes water used in manufacturing;

(4) an analysis of the economic affects on a consuming industry and other Great Lakes interests associated with a particular consumptive use control strategy;

(5) an analysis of associated environmental impacts, both singularly and in combination with other consumptive use control strategies; and

(6) a summary discussion containing recommendations for methods of controlling consumptive uses which methods maximize benefits to the Great Lakes ecosystem and also provide for continued full economic growth for consuming industries as well as other industries which depend on the use of Great Lakes water.

(c) There is authorized to be appropriated for fiscal years beginning after September 30, 1984, $4,500,000 to carry out this section. Sums appropriated under this section shall remain available until expended.

(d) For purposes of this section, the term "Great Lakes States" means Minnesota, Wisconsin, Illinois, Ohio, Michigan, Indiana, Pennsylvania, and New York.

### APPLICATION FOR OCEAN DISCHARGE MODIFICATIONS

SEC. 49. Section 301(j)(1)(A) of the Federal Water Pollution Control Act is amended by inserting before the semicolon the following: ", except that a publicly owned treatment works which before December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section, may apply for a modification of subsection (h) in its own right not later than thirty days after the date of enactment of the Water Quality Renewal Act of 1984".

### GREAT LAKES INTERNATIONAL COORDINATION OFFICE

SEC. 50. (a)(1) The Congress finds that—

(A) the Great Lakes are a valuable national resource, continuously serving the people of the United States and other nations as an important source of food, fresh water, recreation, beauty, and enjoyment;

(B) the United States should seek to attain the goals embodied in the Great Lakes Water Quality Agreement of 1978 with particular emphasis on goals related to toxic pollutants; and

(C) the Environmental Protection Agency (hereinafter in this section referred to as the "Agency") should take the lead in the effort to meet those goals, working with other Federal agencies and State and local authorities.

(2) It is the purpose of this section to achieve the goals embodied in the Great Lakes Water Quality Agreement of 1978 through improved organization and definition of mission on the part of the agency, funding of State grants for pollution control in the great Lakes area, and improved accountability for implementation of such agreement.

(b)(1) The Great Lakes National Program Office of the Agency is hereby designated as the Great Lakes International Coordination

Office (hereinafter in this section referred to as the "Office"). The head of the Office shall also serve as principal liaison person on Great Lakes matters to the International Joint Commission, United States and Canada (hereinafter in this section referred to as the "Commission").

(2) The Office shall—

(A) develop and implement specific action plans to carry out the responsibility of the United States under the Great Lakes Water Quality Agreement of 1978;

(B) coordinate actions of the Agency (including actions by headquarters and regional offices thereof) aimed at improving Great Lakes water quality;

(C) coordinate actions of the Agency with the actions of other Federal agencies and State and local authorities, so as to insure the input of those agencies and authorities in developing water quality strategies and obtain the support of those agencies and authorities in achieving the objectives of such agreement;

(D) establish a Great Lakes system-wide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants; and

(E) serve as the liaison with, and provide information to, the Canadian members of the Commission and the Canadian counterpart to the Agency.

(3) The Administrator of the Agency shall ensure that the office should enter into agreements with the various organizational elements of the Agency involved in Great Lakes activities in the appropriate State agencies specifically delineating—

(A) the duties and responsibilities of each such element with respect to the Great Lakes;

(B) the time periods for carrying out such duties and responsibilities; and

(C) the resources to be committed to such duties and responsibilities.

(4) The Administrator of the Agency shall, in the Agency's annual budget submission to Congress, include a funding request for the Office as a separate budget line item.

(c)(1) There are authorized to be appropriated for the purposes of carrying out subsection (b) and for the purpose of carrying out the functions, powers, and duties of the Office not to exceed—

(A) $8,000,000 for fiscal year 1986;
(B) $9,000,000 for fiscal year 1987;
(C) $10,000,000 for fiscal year 1988;
(D) $11,000,000 for fiscal year 1989; and
(E) $12,000,000 for fiscal year 1990.

(2) For the purpose of carrying out section 104(f) of the Federal Water Pollution Control Act there is authorized to be appropriated $10,000,000 for fiscal year 1985. Such funds shall be in addition to and not in lieu of any funds authorized to be appropriated under section 104(u) of such Act.

(d)(1) Within 120 days after the date of enactment of this Act, and at the beginning of each fiscal year thereafter, the Administrator of the Agency shall submit to Congress a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978. The assessment shall show by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amounts anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates. The assessment shall also include a report of current programs administered by other Federal agencies which make available resources to Great Lakes water quality efforts.

(2) Within 150 days after the end of each fiscal year, the Administrator of the Agency shall submit to Congress a comprehensive report which—

(A) describes the achievements in the preceding fiscal year in implementing such agreement and shows by categories (including judicial enforcement, research, State cooperative efforts, and general administration) the amounts expended on Great Lakes water quality initiatives in such preceding fiscal year;

(B) describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality of the Great Lakes, with particular reference to toxic pollutants; and

(C) describes the long-term prospects for improving the water quality of the Great Lakes.

### RESEARCH ON EFFECTS OF POLLUTANTS

Sec. 51. (a) In carrying out the provisions of subsection (a) of section 104 of the Federal Water Pollution Control Act, the Administrator of the Environmental Protection Agency shall conduct research on the harmful effects on the health and welfare of persons caused by pollutants in water, in conjunction with the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, and other Federal, State, and interstate agencies carrying on such research. Such research shall include, and shall place special emphasis on, the effect that bioaccumulation of these pollutants in aquatic species has upon reducing the value of aquatic commerical and sport industries. Such research shall further study methods to reduce and remove these pollutants from the relevant affected aquatic species so as to restore and enhance these valuable resources.

(b) There is authorized to be appropriated to carry out subsection (a) of this section not to exceed $2,500,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988.

### DEMONSTRATION PROGRAMS ON ACIDIFIED LAKES

Sec. 52. (a) The Administrator of the Environmental Protection Agency, in conjunction with the United States Fish and Wildlife Service, shall carry out a demonstration program to restore the biological integrity of acidified lakes and watersheds through liming. The Administrator shall select sites to carry out such program which will enable the Administrator to demonstrate and determine the effectiveness of liming in reducing the acidity of lakes and watersheds and in restoring the biological integrity of acidified lakes and watersheds.

(b) The Administrator of the Environmental Protection Agency shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate reports on the results of the demonstration program carried out under this section not later than 90 days after completion of the demonstration program and not later than three and six years after completion of the program. Such reports shall include, but not be limited to, an analysis of the effectiveness of liming in reducing the acidity of lakes and watersheds and in restoring the biological integrity of acidified lakes and watersheds in the long-term and the short-term.

(c) There is authorized to be appropriated to carry out this section not to exceed $25,000,000 for fiscal years beginning after September 30, 1984, to remain available until expended.

### SEATTLE, WASHINGTON

Sec. 53. The Administrator of the Environmental Protection Agency is authorized to make a grant to the municipality of metropolitan Seattle, Washington, to construct necessary treatment works for providing secondary treatment for the area served by such agency. The Federal share of such project shall be 75 percent of the cost of construction thereof. There is authorized to be appropriated $250,000,000 to carry out this section for fiscal years beginning after September 30, 1984, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

### GRANTS FOR CARRYING OUT GROUNDWATER QUALITY PROTECTION ACTIVITIES

Sec. 54. (a) Upon application of a State for which a report submitted under subsection (a) of section 319 of the Federal Water Pollution Control Act, as added by section 8 of this Act, and a plan submitted under subsection (b) of such section is approved under such section, the Administrator of the Environmental Protection Agency shall make grants under this section to such State for the purpose of assisting such State in carrying out groundwater water quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.

(b) An application for a grant under this section shall be in such form and shall contain such information as the Administrator of the Environmental Protection Agency may require.

(c) The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this section shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this section in any fiscal year shall not exceed $150,000.

(d) The Administrator of the Environmental Protection Agency shall include in each report transmitted under subsection (k) of section 319 of the Federal Water Pollution Control Act, as added by section 8 of this Act, a report on the activities and programs implemented under this section during the preceding fiscal year.

(e) There is authorized to be appropriated to carry out this section not to exceed $7,500,000 per fiscal year for the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989.

### PULP MILL STUDY-REPORT

Sec. 55. The Administrator of the Environmental Protection Agency, in consultation with the State of Alaska, shall conduct and prepare a study-report which shall determine the feasibility of resolving the air pollution control, solid waste disposal, water quality standards compliance, and energy impacts associated with the achievement of best practicable technology under section 301 of the Federal Water Pollution Control Act with respect to—

(1) the Alaska Lumber and Pulp Company, located at Sitka, Alaska (NPDES permit numbered AK000053-1); and

(2) the Louisian-Pacific Corporation, located at Ketchikan, Alaska (NPDES permit numbered AK000092-2).

The Administrator shall submit such study-report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than three months after the date of enactment of this Act.

### NATIONAL GROUND WATER COMMISSION

Sec. 56. (a) There is established a commission to be known as the National Ground Water Commission (hereinafter in this section referred to as the "Commission").

(b) The duties of the Commission are to:

(1) Assess generally the amount, location, and quality of the Nation's ground water resources.

(2) Identify generally the sources, extent, and types of ground water contamination.

(3) Assess the scope and nature of the relationship between ground water contamination and ground water withdrawal and develop projections of available, usable ground water in future years on a nationwide basis.

(4) Assess the relationship between surface water pollution and ground water pollution.

(5) Assess the need for a policy to protect ground water from degradation caused by contamination.

(6) Assess generally the extent of overdrafting of ground water resources, and the adequacy of existing mechanisms for preventing such overdrafting.

(7) Assess generally the engineering and technological capability to recharge aquifers.

(8) Assess the adequacy of the present understanding of ground water recharge zones and sole source aquifers and assess the adequacy of knowledge regarding the interrelationship of designated aquifers and recharge zones.

(9) Assess the role of land-use patterns as these relate to protecting ground water from contamination.

(10) Assess methods for remedial abatement of ground water contamination as well as the costs and benefits of cleaning up polluted ground water and compare cleanup costs to the costs of substitute water supply methods.

(11) Investigate policies and actions taken by foreign governments to protect ground water from contamination.

(12) Assess the use and effectiveness of existing interstate compacts to address ground water protection from contamination.

(13) Analyze existing legal rights and remedies regarding contamination of ground water.

(14) Assess the adequacy of existing standards for ground water quality under State and Federal law.

(15) Assess monitoring methodologies of the States and the Federal Government to achieve the level of protection of the resource as required by State and Federal law.

(16) Assess the relationship between ground water flow systems (and associated recharge areas) and the control of sources of contamination.

(17) Assess the role of underground injection practices as a means of disposing of waste fluids while protecting ground water from contamination.

(18) Assess methods for abatement and containment of ground water contamination and for aquifer restoration including the costs and benefits of alternatives to abatement and containment.

(19) Assess State and Federal ground water law and mechanisms with which to manage the quality and quantity of the ground water resource.

(20) Assess the adequacy of existing ground water research and determine future ground water research needs.

(21) Assess the roles of State, local, and Federal Governments in managing ground water quality and quantity.

(c)(1) The Commission shall be composed of nineteen members as follows:

(A) six appointed by the Speaker of the United State House of Representatives from among the Members of the House of Representatives, two of whom shall be members of the Committee on Energy and Commerce, two of whom shall be members of the Committee on Public Works and Transportation, and two of whom shall be members of the Committee on Interior and Insular Affairs;

(B) four appointed by the majority leader of the United States Senate from among the Members of the United States Senate;

(C) eight appointed by the President as follows:

(i) four from among a list of nominations submitted to the President by the National Governors Association, two of whom shall be representatives of ground water appropriation States and two of whom shall be representatives of ground water riparian States;

(ii) one from among a list of nominations submitted to the President by the National League of Cities and the United States Conference of Mayors;

(iii) one from among a list of nominations submitted to the President by the National Academy of Sciences;

(iv) one from among a list of nominations submitted to the President by groups, organizations, or associations of industries the activities of which may affect ground water; and

(v) one from among a list of nominations submitted to the President from groups, organizations, or asociations of citizens which are representative of persons concerned with pollution and environmental issues and which have participated, at the State or Federal level, in studies, administrative proceedings, or litigation (or any combination thereof) relating to ground water; and

(D) the Director of the Office of Technology Assessment.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made. Appointments may be made under this subsection without regard to section 5311(b) of title 5, United States Code. Not more than three of the six members appointed under subparagraph (A) and not more than two of the four members appointed under subparagraph (B) may be of the same political party. No member appointed under paragraph (C) may be an officer or employee of the Federal Government.

(2) If any member of the Commission who was appointed to the Commission as a Member of the Congress leaves that office, or if any member of the Commission who was appointed from persons who are not officers or employees of any government becomes an officer or employee of a government, he may continue as a member of the Commission for not longer than the ninety-day period beginning on the date he leaves that office or becomes such an officer or employee, as the case may be.

(3) Members shall be appointed for the life of the Commission.

(4)(A) Except as provided in subparagraph (B), members of the Commission shall each be entitled (subject to appropriations provided in advance) to receive the daily equivalent of the maximum annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission. While away from their homes or regular places of business in the peformance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(B) Members of the Commission who are Members of Congress shall receive no additional pay, allowances, or benefits by reason of their service on the Commission.

(5) Five members of the Commission shall constitute a quorum but two may hold hearings.

(6) The Chairman of the Commission shall be appointed by the Speaker of the House of Representatives from among members appointed under paragraph (1)(A) of this subsection and the Vice Chairman of the Commission shall be appointed by the majority leader of the Senate from among members appointed under paragraph (1)(B) of this subsection. The Chairman and the Vice Chairman of the Commission shall serve for the life of the Commission unless they cease to be members of the Commission before the termination of the Commission.

(7) The Commission shall meet at the call of the Chairman or a majority of its members.

(d) (1) The Commission shall have a Director who shall be appointed by the Chairman, without regard to section 5311(b) of title 5, United States Code.

(2) The Chairman may appoint and fix the pay of such additional personnel as the Chairman considers appropriate.

(3) With the approval of the Commission, the Chairman may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code.

(4) The Commission shall request, and the Chief of Engineers and the Director of the Geological Survey are each authorized to detail, on a reimbursable basis, any of the personnel of their respective agencies to the Commission to assist it in carrying out its duties under this section. Upon request of the Commission, the head of any other Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under this section.

(e) (1) The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(2) Any member or agent of the Commission may, if so authorized by the Commis-

sion, take any action which the Commission is authorized to take by this section.

(3) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(4) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(5) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(f) (1) The Commission shall transmit to the President and to each House of the Congress a report not later than October 30, 1986. The report shall contain a detailed statement of the findings and conclusions of the Commission with respect to each item listed in subsection (b), together with its recommendations for such legislation and administrative actions, as it considers appropriate.

(2) Not later than one year after the date of enactment of this Act, the Commission shall complete a preliminary study concerning ground water contamination from hazardous and other solid waste and submit to the President and to the Congress a report containing the findings and conclusions of such preliminary study. The study shall be continued thereafter, and final findings and conclusions shall be incorporated as a separate chapter in the report required under paragraph (1). The preliminary study shall include an analysis of the extent of ground water contamination caused by hazardous and other solid waste, the regions and major water supplies most significantly affected by such contamination, and any recommendations of the Commission for preventive or remedial measures to protect human health and the environment from the effects of such contamination.

(g) The Commission shall cease to exist on January 1, 1987.

(h) There is authorized to be appropriated for the fiscal years 1985 through 1987 not to exceed $7,000,000 to carry out this section.

LIMITATION ON PAYMENTS

Sec. 57. No payments may be made under this Act except to the extent provided in advance in appropriation Acts.

Mr. ROE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

(Mr. ROE asked and was given permission to revise and extend his remarks.)

(By unanimous consent, Mr. Roe was allowed to proceed for 5 additional minutes.)

Mr. HOWARD. Mr. Chairman, will the gentleman yield?

Mr. ROE. I yield to the gentleman from New Jersey.

Mr. HOWARD. I thank the gentleman for yielding.

Mr. Chairman, I just wish to take this time to congratulate the gentleman in the well, the gentleman from New Jersey [Mr. Roe], the gentleman from Minnesota [Mr. Stangeland], the ranking minority member on the Subcommittee on Water Resources, all the members of the Public Works and Transportation Committee, and to a very great degree the majority and minority staffs of this subcommittee, which have worked so long and so hard to present this, the finest clean water bill ever presented to the Congress. I congratulate them on their work and effort, and I ask for the overwhelming support of our colleagues on this vital measure.

Mr. ROE. Mr. Chairman, I thank the gentleman from New Jersey [Mr. Howard] for his comments, and I, too, want to extend my appreciation to him and to the gentleman from Kentucky [Mr. Snyder], the ranking minority member of the committee, and the gentleman from Minnesota [Mr. Stangeland], the ranking minority member of the subcommittee, who is my counterpart on the Subcommittee on Water Resources. I also want to particularly single out the gentleman from Pennsylvania [Mr. Edgar] amongst our other Members who have done such a splendid job on this legislation, and particularly the staff for the outstanding job and the work that they have conducted on this most important Water Quality Renewal Act of 1984.

Mr. Chairman, this amendment is an amendment in the nature of a substitute to the bill, H.R. 3282, the Water Quality Renewal Act of 1984, which was reported by our committee on June 6, 1984. This amendment is designed to address a number of problems which arose after the bill was reported. The amendment was published in the Congressional Record for June 22 for the information of the Members. A detailed analysis of the amendment follows:

SECTION-BY-SECTION ANALYSIS

(AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 3282 OFFERED BY MR. ROE)

SECTION 1

Section 1 provides that this Act may be cited as the Water Quality Renewal Act of 1984.

SECTION 2

This section continues through Fiscal Year 1988 authorizations at existing levels for a number of programs in the Water Pollution Control Act as follows:

$22,770,000 per fiscal year for research activities and investigations on the causes and effects of water pollution.

$3 million per fiscal year for the training of personnel who operate and maintain treatment plants.

$1,500,000 per fiscal year for forecasting the supply of and demand for occupational categories needed in the water pollution control field.

$75 million per fiscal year for grants to

State and interstate agencies to assist in administering programs for water pollution control.

$7 million per fiscal year for grants to educational institutions for programs to train personnel in the operation of water pollution control facilities and to provide scholarships for students entering the field of operation and maintenance of publicly owned treatment works.

$100 million per fiscal year for grants under section 208 for developing and operating areawide waste treatment management planning processes.

$100 million per fiscal year for the rural clean water program.

$100 million per fiscal year to implement interagency agreements for the utilization of other Federal laws to assist in controlling water pollution.

$30 million per fiscal year for the Clean Lakes Program, which provides for the restoration of the quality of water in lakes.

$160 million per fiscal year for general administration of the Federal Water Pollution Control Act by the Environmental Protection Agency.

### SECTION 3

This section increases the authorization level for the Construction Grants Program from its present level of $2.4 billion per fiscal year. The new amounts are $2,900,000,000 for fiscal year 1985, and $3,400,000,000 per year for fiscal years 1986, 1987 and 1988.

### SECTION 4

This section extends the compliance dates for achievement of best available technology and best conventional technology.

Subsection (a) of section 4 extends the compliance date for all toxic pollutants referred to in Table 1 of Committee Print 95-30 of the House Committee on Public Works and Transportation (the priority pollutants). Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date such effluent limitations are established.

Subsection (b) of section 4 extends the compliance date for all other toxic pollutants which may be listed under 307(a). Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date of establishment of any applicable effluent limitations.

Subsection (c) of section 4 extends the compliance date for application of best conventional technology (for conventional pollutants—biological oxygen demand, fecal coliform, suspended solids and pH) from July 1, 1984, to July 1, 1987.

Subsection (d) of section 4 extends the requirement for best available technology for all other pollutants. Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date the effluent limitations are established.

Subsection (e) of section 4 requires the Administrator of the Environmental Protection Agency to promulgate final regulations establishing effluent limitations for direct dischargers and limitations requiring pretreatment for all of the toxic pollutants referred to in Table 1 of Committee Print 95-30 in accordance with the following schedule: [Not reproduced in the RECORD.]

### SECTION 5

This section provides for the development and implementation of individual control strategies to achieve compliance with applicable water quality standards where it is determined that such compliance will not result from the application of best available technology and best conventional technology.

Subsection (a) requires the Administrator, in cooperation with the States, and not later than one year after the date of enactment of this legislation, to publish in the Federal Register a list of all navigable waters in each State for which the Administrator does not expect the applicable water quality standard to be achieved after the requirements for best available technology and best conventional technology are met, due entirely or substantially to discharges from point sources of toxic pollutants listed pursuant to section 307(a). For each segment of the waters included on this list, the Administrator is to determine the specific point sources discharging toxic pollutants which are believed to be preventing or impairing such water quality, and the amount of each toxic pollutant discharged by each source. At a minimum, the Administrator is to consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after the date of enactment of the subsection.

Not later than one year after the date of publication of the list, the Administrator, in cooperation with the States, is to issue proposed regulations setting forth each listed segment of the navigable waters an individual control strategy. Each strategy shall produce a reduction in the discharge of toxic pollutants from point sources identified by the Administrator, through the establishment of effluent limitations and water quality standards which reduction is sufficient, in combination with other controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy.

Subsection (b) amends the citizen suits provision of section 509 of the Act to allow interested persons to bring a legal action for review of the Administration's promulgation of individual control strategies under section 6.

### SECTION 6

Subsection (a) of this section increases the maximum amount of a civil penalty for violating certain provisions of the Act from $10,000 per day to $20,000 per day.

Subsection (b) provides that the Federal Water Pollution Control Act shall not be construed as requiring a State to have a civil penalty for violations described in section 309(d) which has the same monetary amount as the civil penalty established by this section. This relates to the requirement in the Act that a State have adequate enforcement and penalty provisions in order to assume management of the National Pollution Discharge Elimination System under section 402 of the Act.

### SECTION 7

This section directs the Administrator, in cooperation with interested States and Federal agencies, to study and monitor the effects on the quality of navigable waters attributable to the impoundment and discharge of water by dams. The results of this study, together with recommendations for the control of such impoundment and discharges, shall be submitted to Congress not later than December 31, 1985.

### SECTION 8

This section adds a new section 319 to Title III of the Federal Water Pollution Control Act, to provide for nonpoint source control implementation programs.

Subsection (a) of new section 319 provides that the Governor of each State shall prepare and submit to the Administrator for his approval a report which:

Identifies those portions of the navigable waters within the State which, as a result of pollution from nonpoint sources in whole or in part, are not meeting applicable water quality standards or the goals or requirements of the Act;

Identifies those categories and subcategories of nonpoint sources which add significant pollution to each portion of the navigable waters identified under the preceding provision, in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

Identifies and describes State and local programs for controlling pollution added from nonpoint sources to and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance;

Describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control nonpoint sources of pollution.

Subsection (b) of new section 319 provides that the Governor of each State shall prepare and submit to the Administrator for his approval:

A plan which the State proposes to implement, in the first four fiscal years beginning after the date of submission of the plan, for controlling pollution from nonpoint sources;

A report which identifies each department, agency, or instrumentality of the United States, and each department, agency, or instrumentality of the State, which is likely to be engaging in, supporting or providing financial assistance for any activity or program in the State which, if carried out, would be inconsistent with implementation of the State's plan for controlling nonpoint sources. This report is to recommend to the Administrator methods by which Federal departments could modify administration of their activities or programs and describe methods by which the State intends to modify administration of its activity or program so that the activity or program is consistent with and assists the State in implementation of its plan for control of nonpoint sources.

Each plan proposed for implementation must specify:

For those portions of navigable waters significantly affected by nonpoint pollution, the particular portion of navigable waters and the land area contributing such pollution with respect to which the State plans to assist, encourage, or require implementation of best management practices and measures in the first four fiscal years beginning after the date of submission of the plan;

The order in which, and the schedule under which, the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years;

The categories and subcategories of nonpoint sources of pollution with respect to which the State plans to assist, encourage, or require implementation of such practices and measures;

The best management practices and measures, the implementation of which the State plans to assist, encourage, or require;

The methods by category and subcategory of sources of pollution, which the State plans to use to assist, encourage or require implementation of such practices and measures; and

Sources of Federal and other assistance which will be available for supporting implementation of such practices and measures and the purposes for which the assistance will be used in each of the fiscal years.

Each plan submitted by a State under this subsection shall be accompanied by a certification of the Attorney General of the State, or the chief attorney of any State water pollution control agency, that the laws of the State provide adequate authority to implement the plan or, if adequate authority does not exist, a list of the additional authority which will be necessary to implement the plan.

The implementation schedule must establish for each category and subcategory of nonpoint sources of pollution an expeditious period for implementation of best management practices and measures and shall include the estimated dates for implementation of these practices and measures.

In developing and implementing a plan under this section, a State is required, to maximum extent practicable, to utilize local, public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

The States are directed, to the maximum extent practicable, to develop and implement nonpoint source control plans on a watershed-by-watershed basis.

Subsection (c) of new section 319 requires that any report required by subsection (a) and any plan and report required by subsection (b) shall be submitted to the Administrator during the 270-day period beginning on the date of enactment of this legislation, except that, upon request of the Governor, the Administrator shall extend this period for not to exceed an additional 270 days.

If the Governor of a State does not submit the report required by subsection (a) during such period (the report describing existing State programs and practices), the Administrator is to prepare the report for the State.

Subsection (d) of new section 319 directs the Administrator to consolidate recommendations for modifications of activities and programs submitted by the States and submit these consolidated recommendations to the appropriate departments, agencies and instrumentalities of the United States. Each such department, agency or instrumentality, to the maximum extent practicable and consistent with existing law, must accommodate these recommendations and carry out its own activities and programs in a manner which is consistent with and will assist implementation of the State's nonpoint source pollution control plan.

Subsection (e) of new section 319 provides that, subject to paragraph 2, not later than 180 days after the date of submission of any report or plan under this section, the Administrator shall either approve or disapprove the report or plan as the case may be. The Administrator may also approve or disapprove a portion of a plan. If the Administrator does not disapprove a report, a plan, or a portion of a plan, in the 180-day period, it is deemed approved. Paragraph 2 provides that if, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies, the Administrator determines that the State plan or any portion of it is not likely to satisfy the goals and requirements of the Federal Water Pollution Control Act, that adequate authority does not exist or adequate resources are not available to implement the plan, or that the plan is not adequate to improve the quality of waters in the State, the Administrator is directed to disapprove the plan or a portion of the plan with respect to which the Administrator makes his determination. The Administrator must notify the State of any disapproval and request specific revisions of the plan or portion of the plan necessary to obtain approval. Not later than 90 days after the date of this notification, the State must submit its revised plan to the Administrator for his approval.

Subsection (f) of new section 319 provides that, if a State fails to submit a plan or the Administrator does not approve a plan for the control of nonpoint sources of pollution, a local agency or organization which has expertise in, and authority to, control pollution resulting from nonpoint sources in any area of the State which the Administrator determines is of sufficient geographic size, may, with the approval of the State, request the Administrator to provide technical assistance to it in developing for such area a nonpoint source pollution control plan. The agency or organization must submit its plan to the Administrator for his approval. If the Administrator approves the plan, the agency or organization shall be eligible to receive financial assistance for implementation of the plan as if the agency or organization were a State.

Subsection (g) of new section 319 provides that, upon request of the State, the Administrator may provide technical assistance to the State in developing a nonpoint source pollution control plan.

Subsection (h) of new section 319 provides that, if any portion of the waters in a State which is implementing a plan approved under this section is not meeting applicable water quality standards because of pollution from nonpoint sources in another State, the State may petition the Administrator to convene, and the Administrator shall convene, a management conference of the involved States which contribute pollution resulting from nonpoint sources. If, on the basis of information available to him, the Administrator determines that a State is not meeting applicable water quality standards because of pollution from nonpoint sources from another State, the Administrator shall notify the States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification whether or not the State requests the conference. The purpose of the conference is to develop agreement among the States to reduce the level of pollution.

A State contributing significant pollution from nonpoint sources to another State must submit to the Administrator for his approval a nonpoint source pollution control plan to reduce the level of pollution, or, if it has an approved plan, the State must revise the plan to reduce the level of pollution entering the other State.

Subsection (i) of new section 319 provides for grants to States with approved plans for the purpose of assisting the States in implementing the plans. The Federal share of the cost of the plan shall not exceed 50 percent of the cost incurred by the States. However, where the Administrator determines that a significant number of non-Federal, non-State interests in a watershed area are willing and able to enter into agreements to participate in nonpoint source pollution control measures, the grant shall be not less than 50 percent and not more than 60 percent. This bonus grant—of up to 10 percent—is intended to provide a greater incentive for individuals and local organizations to work together to solve nonpoint source pollution problems. The phrase "significant number of interests" is intended to provide the administrators of this program with the flexibility to include landowners, farmers, conservation districts, national resource districts, or other suitable regional non-governmental organizations which may be functioning within a watershed, regardless of the size of the interest.

The State must enter into agreements with the Administrator of the Environmental Protection Agency to assure that the State will maintain its aggregate expenditures for programs for controlling pollution added to the navigable waters in the State from nonpoint sources and for improving the quality of waters at or above the average level of such State expenditures in the two fiscal years preceding the date of enactment of this subsection.

Each State which receives a grant under this section must submit to the Administrator a written report which describes the activities and programs carried out in the State under the grant and the progress made by such State in meeting the schedule specified under its State plan.

No grant may be made in any fiscal year to a State which in the preceding fiscal year received a grant under this section, unless the Administrator determines that the State made satisfactory progress in meeting the schedule specified by the State in its submitted and approved plan.

Not more than 15 percent of the amount appropriated to carry out this section may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of the State.

Beginning with fiscal year 1987, the administrator is authorized to give priority in making grants, and shall give consideration in determining the Federal share of any grants, to any State which has included effective regulatory mechanisms in an approved State plan and has implemented such mechanisms in the preceding fiscal year. Such mechanisms shall include, but not be limited to, deadlines for implementation of best management practices and enforcement procedures to ensure implementation of the State's plan.

There is authorized to be appropriated to carry out this grant program not to exceed $150 million per fiscal year for fiscal years 1985 through 1989.

Not later than January 1, 1985, and each January 1 thereafter, the Administrator is to transmit to the Committee on Public Works and Transportation of the House and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of these waters.

The Administrator is to transmit to Congress a final report on the activities carried out under this section. This report, at a minimum, is to include:

An analysis of the effectiveness of plans carried out under this section, and of the best management practices and measures utilized under those plans in controlling nonpoint sources of pollution;

An analysis of the level of State participation in implementing such plan;

Recommendations of the Administrator concerning future programs, including enforcement programs, for controlling pollution from nonpoint sources.

Not less than 5 percent of the funds appropriated to carry out this section shall be available to the Administrator to maintain personnel levels at the Environmetal Protection Agency which are adequate to carry out this section.

### SECTION 9

Section 9 adds to section 101(a) of the Federal Water Pollution Control Act the statement that it is the national policy that plans for the control of nonpoint source pollution be developed and implemented in an expeditious manner, so as to enable the goals of the Act to be met through the control of both point and nonpoint sources of pollution. The intent of this section is to emphasize the importance of controlling nonpoint sources of pollution, together with point sources, so as to achieve the water quality goals of the Act.

### SECTION 10

Section 10 amends subsection 104(h) of the Federal Water Pollution Control Act to require the Administrator to submit a lake restoration guidance manual to this Committee and the Committee on Environment and Public Works of the Senate. The manual, to be submitted not later than one year after date of enactment of H.R. 3282, shall establish procedures to guide future State and local efforts to improve water quality in lakes.

Subsection 104(h) of the Act currently authorizes the Administrator to enter contracts with or make grants to public or private agencies for the purpose of developing and demonstrating new or improved methods for the prevention, removal, reduction, and elimination of pollution in lakes. As part of this effort, the Committee understands that EPA's Office of Research and Development has spent considerable time and resources on an evaluation of the effectiveness of lake quality improvement techniques. It was expected that a guidance manual would be developed based on this work. This has not been done. The Committee believes that a guidance manual will significantly assist future State and local efforts to improve lake quality. Because the bulk of the background work has been done, the Committee is confident that a year or less is sufficient time for EPA to complete and submit this manual.

### SECTION 11

Subsection (a) of section 11 amends section 201(g)(1) of the Federal Water Pollution Control Act by adding projects to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows to the list of categories which are leigible for Federal grant assistance.

Subsection (b) of section 15 amends section 201(n)(2) of the Act which provides grants to address water quality problems due to the impacts of discharges from combined storm water and sanitary sewer overflows into marine bays and estuaries by increasing the amount authorized from $200 million per fiscal year to $500 million per fiscal year.

Pollution resulting from combined sewer overflows is a severe problem in many parts of the country, particularly in older cities. One particular example is the discharges of untreated effluent as a result of sewer overflows into the Neponset River and Dorchester Bay and Boston Harbor in the Boston Metropolitan Area. In order to diminish the threat to public health posed by these discharges, the Committee expects funding priority under Section 15 to be used for combined sewer overflow improvement projects in this area.

### SECTION 12

Subsection (a) of this section amends section 202(a)(1) of the Federal Water Pollution Control Act by changing the basic 55 percent Federal construction grant share to 65 percent.

The Municipal Wastewater Treatment Construction Grant Amendments of 1981, P.L. 97-117, amended the Act to provide the Federal grant amount for eligible projects in the regular program to be 55 percent of the cost of construction beginning October 1, 1984. Since the passage of P.L. 92-500 in 1972, the basic Federal grant share has been 75 percent. The effect of subsection (a) of section 16 will be that the change as of October 1, 1984, will be from 75 percent to 65 percent.

Subsection (b) of section 12 amends section 202(a)(1) of the Act by adding projects to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows. This is the subsection which provides that projects which have received a step three construction grant before October 1, 1984, will continue to receive a Federal grant of 75 percent until completion.

Subsection (c) of section 12 provides that, in the case of any project for which an application for a grant has been made before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, the project shall still be eligible for grants of 75 percent of the construction cost.

Subsection (d) provides that the activated bio-filter feature for treatment works of the City of Little Falls, Minnesota, shall be deemed to be an innovative wastewater process and technique and shall be eligible for the increased grants which the Act makes available for innovative technology projects.

The Little Falls project is designed to use activated bio-filters (ABFs) in its treatment system. ABFs have been used in wastewater systems before, but not as they would be used in Little Falls. In Little Falls, the ABF component will be part of the second stage in a trickling filter system. The innovative classification is appropriate because there exists little or no performance data on the optimum loadings, sizing, and other considerations with which the application can be designed without some risk. There is no other situation of ABFs having been used exactly as is being proposed in the Little Falls treatment works. In addition, there is doubt about how the extreme cold of Minnesota winters will affect performance.

Subsection (e) of section 12 amends section 202(a)(3) of the Act. This section authorizes the Administrator to make grants to fund all the costs of the modification or replacement of any facilities constructed with a grant made available for innovative technology if the Administrator finds that the facilities have not met design performance, unless the failure is attributable to negligence on the part of any person.

Subsection (e) amends this provision by providing that, in addition, the Administrator is authorized to make a grant to fund all the costs of the modification or replacement of biodisc equipment (rotating biological contactors) in any publicly owned treatment works if the Administrator finds that the equipment has not met design performance specifications, unless the failure is attributable to negligence on the part of any person, and if the failure has significantly increased capital or operating and maintenance expenditures.

### SECTION 13

Section 203(a) of the Federal Water Pollution Control Act requires each applicant for a grant to submit to the Administrator for his approval plans, specifications and estimates for each proposed project for the construction of treatment works for which a grant application is made. Section 13 amends this provision to provide that before taking final action on such plans, specifications and estimates, the Administrator must first enter into an agreement with the applicant which establishes and specifies to the extent practicable which items of the proposed project are eligible for Federal payments under this section. Once this agreement has been entered into, the Administrator may not refuse to make payments for the Federal share of those reasonable costs of any item specified in the agreement which are incurred on the project.

Under current law, once the Administrator approves a grant applicant's plans, specifications, and estimates, the approval constitutes a contractual obligation of the United States for payment of the Federal Government's proportional contribution to the project covered by the grant. Current Agency audit procedures permit construction grants to be obligated only for allowable costs. However, these costs are determined until a final audit of the project grant is conducted. Thus, an EPA auditor is in a position to and often does reevaluate and override during the final audit process the previously approved allowable costs, despite the fact that the agency had approved the plans and specifications for the project prior to obligation of the grant funds. This practice subjects grant recipients to a great deal of vulnerability during the audit process and leads, in some instances, to substantial and unplanned financial burdens for the grantee.

The purpose of section 13 is to emphasize and effectuate the Committee's intent that award to a grantee of a Title II wastewater treatment construction grant constitutes a binding contractual obligation of the Federal government. Where the Administrator approves an agreed-upon specific project for grant funding, then under this provision the United States is contractually obligated to fund that project as it was approved, so long as the grantee acted in good faith and in accordance with the grant agreement and the costs are not in violation of Federal law. In this manner, the Agency's dealings with the States and with grantees will be one a more reliable and business-like basis, with all parties knowing what costs are allowable for grant funding.

The Committee intends that the Administrator, in implementing section 13, will continue to review plans, specifications, and estimates to ensure that wastewater treatment projects are cost effective.

### SECTION 14

Subsection 14(a) amends Section 204(a)(1) of the Federal Water Pollution Control Act to require the Administrator, before approving sewage treatment construction grants for any project, to determine that either any required areawide waste treatment management plan under section 208 is being implemented for such area and the proposed treatment works are included in such plan or that reasonable progress toward implementation is being made.

Subsection 14(b) amends Section 204(a)(2) of the Act and requires similar conformance with plans and reports in sections 303(e) and 305(b) of the Act.

Subsection 14(c) provides that the amendments made in subsections (a) and (b) of section 18 shall take effect two years after the date of enactment of this legislation.

Section 204 of the Act provides certain conditions that the Administrator must assure are met before making grants. It provides at present for projects receiving funding to be part of existing plans and in conformance with sections 303(e) and 305(b). The amendments in section 14 seek to provide additional assurance that consistent program progress will be maintained by focusing on implementation.

The 208 program provides for the development of areawide waste treatment plans. Grant monies under section 208 are to be made available to identify pollution problems and decide on a management plan to address the problems. Section 303(e) requires each State to have a continuing planning process. Section 305(b) requires submission by each State every two years of a report on the water quality situation for that State.

The Committee, by adopting the amendments in section 14, intends that the programs of areawide planning and consistency with plans and programs to meet the goals of the Act be pursued. The plans developed under section 208, for instance, are not to be static documents to be written and ignored. The Committee expects to see these plans implemented in order to meet the goals of the Act. Similar use is expected of 303(e) and 305(b) requirements.

### SECTION 15

Section 204(b)(1) of the Federal Water Pollution Control Act provides that, notwithstanding any other provisions of the Act, the Administrator shall not approve any grant for any treatment works unless he shall first have determined that the applicant has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction will pay its proportionate share of the costs of operation and maintenance of any waste treatment services provided by the applicant.

Section 15 amends this by providing that a system of user charges which imposes a lower charge for low-income residential users, as defined by the Administrator, shall be deemed to be a user charge system meeting the requirements of section 204, if the Administrator determines that the system was adopted after public notice and hearing.

### SECTION 16

Subsection (a) of section 16 includes conforming amendments to section 205(c)(2) of the Federal Water Pollution Control Act which provides for allotment of funds authorized to be appropriated for the Construction Grants Program, and specifies the amount allotted to each State, for fiscal years through fiscal year 1985. Subsection (a) adds fiscal years 1986, 1987 and 1988 so as to conform with section 3 of H.R. 3282 which extends and increases the authorizations for construction grants through fiscal year 1988.

Subsection (b) of section 16 amends section 205(e) of the Act so that it conforms with the extension of the construction grant authorizations in section 3 of H.R. 3282.

Section 205(e) provides that, for fiscal years 1978, 1979, 1980, 1981, 1982, 1983, 1984 and 1985, no state shall receive less than one-half of one percent of the total allotment under subsection (c) of section 205, except that in the case of Guam, Virgin Islands, American Samoa, and the Trust Territories, not more than thirty-three one-hundredths of one percent in the aggregate shall be allotted to all four of these jurisdictions. For the purpose of carrying out subsection 205(e) there are authorized to be appropriated, subject to such amounts as are provided in appropriation Acts, not to exceed $75,000,000 for each of fiscal years 1978, 1979, 1980, 1981, 1982, 1983, 1984 and 1985.

Subsection (b) of section 16 also adds fiscal years 1986, 1987 and 1988 to section 205(e) and changes the maximum amount available to Guam, the Virgin Islands, American Samoa and the Trust Territories from one-third of one percent to two-thirds of one percent in order to better meet their water quality needs.

Subsection (c) amends section 205(g)(1) of the Act so that it will conform with the extension of the Construction Grants Program in section 3 of H.R. 3282. Section 205(g)(1) authorizes the Administrator to reserve not to exceed four percent of a State's allotment of construction grant funds for the purpose of making grants to the State for the costs of administering aspects of the construction grants program which the Administrator has delegated to the State.

Subsection (c) also amends section 205(g)(1) by adding a provision that the Administrator shall reserve each fiscal year beginning after September 30, 1984, $900,000 from the sums available to the State of New York under the subsection for such fiscal year, $900,000 from the sums available to the State of New Jersey under the subsection for such fiscal year, and $200,000 from the sums available to the State of Connecticut under the subsection for such fiscal year. These sums shall be used by the Administrator to make a grant for each such fiscal year to the Interstate Sanitation Commission established by these States by interstate compact to carry out the functions of such Commission under the Federal Water Pollution Control Act. The Commission is an environmental agency of the States of New Jersey, New York, and Connecticut, established by an interstate compact having the consent of Congress. Among other things, the Commission has jurisdiction of a regulatory character over water quality in the tidal waters of the northeastern New Jersey, southeastern New York, southwestern Connecticut Metropolitan Area. Specifically, the Interstate Sanitation District includes the Hudson River from the Bear Mountain Bridge to the ocean, Raritan and Sandy Hook Bays, the waterways of the New York Harbor Complex, and Long Island Sound westerly of a line from New Haven to Port Jefferson. The Commission monitors receiving waters and effluents, administers water quality standards, makes regulations containing both effluent limitations and receiving water quality standards, and has authority to enforce its regulations.

In view of the Commission's role in administering provisions of the Federal Water Pollution Control Act, the Committee considers it appropriate to provide additional grant assistance to the Commission under section 205(g).

Subsection (d) of section 16 is a conforming amendment to section 205(i) of the Act so that it will be consistent with the extension of the authorization for construction grants contained in section 3 of H.R. 3282. Section 205(i) provides that a total (as determined by the Governor of a State) of not less than four percent nor more than seven and one-half percent of the construction grant funds allotted to a State shall be used only to increase the Federal share of construction grants for construction of treatment works utilizing innovative or alternative processes and techniques. The increase in the grant for such treatment works is twenty percent greater than the Federal share established in section 202(a)(1), but in no event greater than eighty-five percent.

Subsection (e) of section 16 amends section 205(j)(3) of the Federal Water Pollution Control Act which directs the Administrator to reserve each fiscal year not to exceed one percent of the sums allotted and available for obligation for each State for water quality management planning. Subsection (e) provides that the State shall allocate at least 50 percent of the amount granted to the State for a fiscal year under the section to regional interstate public comprehensive planning organizations in the State, except in any fiscal year for which the Administrator and Governor of any State determine jointly that allocation of at least 50 percent to such organizations will not substantially assist in achieving the goals of the Act.

In the Municipal Wastewater Treatment Construction Grants Amendments of 1981 (P.L. 97-117), a new subsection, 205(j), was added to provide assured funding for a variety of planning purposes. The set-aside is to be for water quality management planning including, among other things: identifying cost effective and locally acceptable point and non-point measures; developing implementation plans; identifying water quality problems; and determining which publicly owned treatment works should be built, and for implementation of section 303(e) of the Act.

A key part of the provision in the 1981 Amendments, which is now part of the Federal Water Pollution Control Act, is:

"(3) In carrying out planning with grants made under paragraph (2) of this subsection, a State shall develop jointly with local, regional, and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undesignated public comprehensive planning organizations to carry out the purposes of this subsection".

Subsection (e) reinforces the original intent to have these organizations carry out a significant part of the program under section 205(j). Such comprehensive planning organizations are assured at least 50 percent of 205(j) funds. There is an exception to this requirement where the Administrator of EPA and the Governor jointly determine otherwise to recognize the differing circumstances among the States.

Subsection (f) of section 16 adds a new subsection to section 205 of the Federal Water Pollution Control Act which provides that ¼ of 1 percent of any amount appropriated for the Construction Grants Program for any fiscal year after fiscal year 1984 shall be reserved by the Administrator for carrying out investigations and audits authorized by the Act of projects for which funds are made available under Title II.

This provision is based on information obtained by an investigation conducted by the Committee's Subcommittee on Investigations and Oversight. In 1981, that Subcommittee investigated problems associated with the construction of treatment works and the adequacy of EPA auditing procedures.

At the time of the Subcommittee's review, the EPA Office of Inspector General's (OIG) resources were so inadequate that it was facing a 70 work-year backlog in audit requests. Further, the OIG had virtually no investigators in two of the EPA's audit regions covering 27 states which had more than $10 billion in active Construction Grants Program projects. Information recently obtained by the Subcommittee indicates that by the end of this year the EPA will still be confronted with a backlog of as many as $1 billion worth of wastewater treatment projects in need of final audits.

Subsection (f), which would result in the allocation of some $6 million annually to the Inspector General's Office at the current level of Construction Grants Program authorizations, will help insure the integrity of the program and the protection of the public's investment in these wastewater treatment facilities.

Subsection (g) of section 16, paragraph (1), directs the Administration to make a grant, from funds allotted to the State of California under section 205 of the Act, to the City of Avalon, California, for improvements to the publicly owned treatment works of that City.

Paragraph (2) of subsection (g) directs the Administrator to make a grant of $2,337,000 from funds allotted to the State of Ohio for fiscal year 1985 to the owners of the Rocky River Wastewater Treatment Plant in Rocky River, Ohio, for reimbursement of the owners for cost of construction of the plant.

The project at Rocky River, which also serves the communities of Bay Village, Westlake, and Fairview Park, was originally funded in 1968 under the Research and Development grant provisions of the Federal Water Pollution Control Act. The project was to use an advanced system of chemical coagulation and carbon filtration in order to provide the high level of treatment required for discharges into Lake Erie. Construction of the plant was initiated in October 1972. Its operation has been a total failure, and a new plant is now being constructed.

EPA has interpreted section 206 of the Act as not being applicable to the Rocky River plant because of the date on which construction was commenced and the fact that it was built with research and development grant assistance rather than construction grant assistance under the Pollution Control Act in existence prior to the 1972 amendments.

The Committee believes that the plant should be eligible for reimbursement and has accordingly provided for it in subsection (g).

Paragraph (3) of subsection (g) directs the Administrator to make grants from funds allotted to the State of Pennsylvania for fiscal year 1985 to Walker Township, Pennsylvania, for developing a collector system and connecting its wastewater treatment system into the Huntington Borough Pennsylvania Sewage Plant, and to Smithfield Township, Pennsylvania, for rehabilitating and extending its collector system.

Sewage disposal in Walker Township is presently accomplished by on-site methods, such as septic tanks and cesspools, and their appurtenances. Such methods are suitable in some parts of the Township in its present state of development. However, in areas with relatively high population density and certain subsurface conditions, there is dire need of public sewers in the immediate future. The project includes construction of a complete sanitary sewage collection system for the Village of McConnellstown and other population concentration areas of the townships (approximately 47,000 linear feet of sanitary sewers), two sewage pumping stations and force mains and a separate interceptor sewer from the Walker Township line to the Huntingdon Sewage Treatment Plants. The estimated cost of the project is $4.5 million. Huntingdon Borough is currently proceeding toward providing required secondary treatment without benefit of EPA construction grants funding. The Committee commends their efforts and wants it to be clear that the funding of the Walker Township project shall not place any construction grants regulations or requirements on Huntingdon Borough as it proceeds on its own.

The Smithfield Township sewer system rehabilitation and extension is in two parts. The first portion is the rehabilitation and replacement of approximately 9,000 linear feet of sewers, laterals, and drains. The estimated cost is $500,000. The second portion is construction of a sewer system to serve the McConnellstown Road area of Smithfield Township from Kelly's Corner to the Walker Township line. The project includes construction of approximately 6,000 linear feet of sewers and laterals. The estimated cost is $400,000.

Paragraph (4) of subsection (g) directs the Administrator to make a grant to the Elk Pinch Public Service District, Kanawha County, West Virginia, from funds allotted to the State of West Virginia, in an amount not exceeding $3 million as is necessary to allow the district to maintain the approved user charge of $4.26 per thousand gallons and shall be in addition to the Federal share of eligible costs of such project otherwise eligible.

As a condition to receiving this grant, the Elk Pinch Public Service District must agree to take necessary steps including litigation, to recover funds from parties against whom the District has claims for damages relating to the design and construction of the plant. Any amounts recovered are to be paid back to the Administrator and are to be reinstated to the allotment of West Virginia under the Construction Grants Program.

Paragraph (5) requires the Administrator to make a grant of $250,000 to the City of Taylor Mill, Kentucky, for any necessary repairs and reconstruction of the City's publicly owned treatment works. The Taylor Mill grant is to be made from funds allotted under section 205 of the Federal Water Pollution Control Act for fiscal year 1985. The Committee has determined that special emphasis should be placed on addressing this wastewater facility need because 49 percent of the population in the area affected by these repairs is below the poverty level.

Paragraph 6 requires the Administrator to make a grant of $27 million from funds allotted to the State of California for fiscal years beginning after September 30, 1984, to the City of Watsonville, California, for improvements to the wastewater treatment and disposal facilities of the city.

### SECTION 17

Section 17 adds to Title II of the Federal Water Pollution Control Act a program for grants to States for establishment of water pollution control revolving funds.

Subsection (a) of new section 220 directs the Administrator to make a grant to each State for deposit in a Water Pollution Control Revolving Fund for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works as defined in section 212 of the Act which are publicly owned.

Subsection (b) provides that, before receiving a grant, the State must first deposit in the fund an amount equal to 20 percent of the amount allotted to the State for a fiscal year.

Each State must submit annually to the Administrator a certification that, upon completion of any project for treatment works for which financial assistance is made available under this section, discharges from such treatment works will meet all applicable requirement necessary to achieve applicable State and Federal water quality standards. The State must further certify that it will comply with all provisions of this section.

Each State is to establish a Water Pollution Control Revolving Fund to provide assistance under this section. The State shall deposit in such Revolving Fund any Federal funds allotted to that State under this section, any amounts received by the State for repayment of loans made by that State with funds in the Revolving Fund and any other funds, except for funds received under any other section of Title II, which the State wishes to depoist in its Revolving Fund. Construction grant funds cannot be deposited in the Revolving Fund.

Subsection (c) of new section 220 provides that a State may use amounts in the Revolving Fund only to make loans, loan guarantees, payments to reduce interest on loans and loan guarantees, bond interest subsidies, and bond guarantees to municipalities and intermunicipal and interstate agencies.

In addition, to the extent provided by State law, any State may issue revenue or general obligation bonds using amounts in the Revolving Fund as the source of revenue or security for the payment of interest and principal on the bonds. The proceeds of the sale of the bonds shall be deposited in the Revolving Fund. No municipality or intermunicipal or interstate agency shall receive a loan from the Revolving Fund unless such municipality or agency establishes a dedicated source of revenue for the repayment of the loan.

A State may provide assistance under this section to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Adminsitrator under any other section of Title II.

A State may provide financial assistance from the Fund for any project which is on the State's priority list under section 216 of the Act, without regard to the ranking of the project on the list.

Subsection (d) of new section 220 provides that a State may make assistance available under this section from the Revolving Fund established by the State to finance the costs of facility planning and the preparation of plans, specifications and estimates for construction of publicly owned treatment works. If the grant recipient under this subsection ultimately receives a construction grant from the Environmental Protection Agency which includes reimbursement for non-Federal funds expended for planning and engineering, the recipient must promptly repay the loan to the extent of the allowance it receives from the Environmental Protection Agency.

Subsection (e) requires each State to annually make a full and complete report to the Adminsitrator concerning the use of Federal funds made available under this section in such manner as the Administrator shall prescribe. Also, at least annually, the Administrator shall conduct, or require each State to have independently conducted, reviews and audits as may be deemed necessary and appropriate by the Administrator to carry out the objectives of this section. Audits of the use of Federal funds shall be conducted in accordance with the auditing procedures of the General Accounting Office.

Subsection (f) states that the provisions of Title II of the Federal Water Pollution Control Act shall not apply to financial assistance under new section 220 except to the extent specifically provided in new section 220. The purpose of this provision is to give States maximum flexibility in the use of the revolving fund.

Subsection (g) of new section 220 authorizes to be appropriated to carry out this section not to exceed $1,600,000,000 per fiscal year for each of the fiscal years 1985 through 1988. These funds are to be allotted by the Administrator in accordance with the same table which provides for allotment of Construction Grant funds. Sums allotted to a State for a fiscal year shall remain available for a grant to such State for the fiscal year for which authorized and for the following fiscal year as well. Any funds granted to a State for a fiscal year under this section which are not utilized by such State for any of the purposes of this section during such fiscal year and the following fiscal year shall be repaid to the Administrator for reallotment among the other States.

The revolving fund was intentionally developed to provide maximum flexibility to the States. The Committee believes this program should be maintained primarily as a State-controlled effort. The Committee will, however, exercise its oversight responsibilities to assure that the States manage the program to optimize the benefits to localities in their efforts to meet the requirements of the Federal Water Pollution Control Act.

Many communities on State priority lists for construction grants funding are too low on the lists to receive grants. Others may not receive the grants as quickly as they are prepared to go forward. The revolving fund is intended to provide a complementary system to the Construction Grants Program. The fund can be used for a project anywhere on the priority list and can be used in combination with grant funds. The $1.5 billion authorization over four years will provide a series of permanent funds among the States totalling $6.4 billion nationwide.

The suggestion of a loan or similar fund as an adjunct to or in lieu of the construction grants program has been discussed for several years. The Committee received substantial testimony that was very helpful in designing this new proposal.

### SECTION 18

Section 301(k) of the Act provides that, in the case of any facility which proposes to comply with the requirements of best available technology by replacing existing production capacity with an innovative production process, which will result in an effluent reduction significantly greater than that required by the otherwise applicable effluent limitation or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable limitation, the Administrator may establish a compliance date no later than July 1, 1987—three years later than the final compliance date otherwise provided in the Act. Section 18 amends this provision, changing the compliance date from July 1, 1987, to a date two years after the date for compliance with the effluent limitation which is otherwise applicable.

In the period since the 1977 Amendments, there have been delays in final promulgation of effluent guidelines. This is in large part what has led to extension of the compliance deadlines in Section 4 of H.R. 3282. There is still potential for the kinds of innovative processes envisioned in the 1977 Amendments. For this reason, the 301(k) innovative technology extension is continued and is to be no later than two years after the date for compliance with effluent limitations otherwise applicable.

### SECTION 19

This section adds a new subsection (n) to section 301 of the Federal Water Pollution Control Act concerning remining operations. It provides that the Administrator, or the State in any case in which the State has an approved permit program under section 402(b), may issue a permit under section 402 which modifies the requirements of subsection (b)(2)(A) of section 301 with respect to the pH level of any discharge, and with respect to discharges of iron and manganese, from the remined area of any coal remining operation. Such modified requirements shall apply the best available technology economically achievable on a case-by-case basis, using best professional judgment. In no event shall such a permit allow the pH level of any discharge, and in no event shall such a permit allow the discharges of iron and manganese, to exceed the levels being discharged from the remined area before the coal remining operation begins.

The Administrator or the State may only issue a permit if the applicant demonstrates to the satisfaction of the Administrator or the State, as the case may be, that the coal remining operation provides a potential for improvement to water quality.

"The term 'coal remining operation' means a coal mining operation which begins after the date of enactment of this subsection at a site on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977; and

"The term 'remined area' means only that area of any coal remining operation on which coal mining was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977.

"Nothing in the new subsection shall affect the application of the Surface Mining Control and Reclamation Act of 1977 to any coal remining operation, including the application of such Act to suspended solids.".

At the time of the passage of the Surface Mining Control and Reclamation Act (SMCRA), an estimated 1.5 million acres of land had been disturbed by coal mining, and over 11,500 miles of streams polluted by sediment or acidity from surface or underground mines. The abandoned mind lands program authorized by SMCRA established a fund to reclaim these abandoned sites where there is no continuing reclamation responsibility under State or Federal law. The program is funded by a reclamation fee levied on coal operators of 35 cents per ton on surface mined coal and 15 cents per ton on underground mined coal. Fee collection began in 1978 and will extend through 1992.

It is estimated that reclamation of 100 percent of coal related abandoned mine land problems would require expenditures of about $12 billion in constant 1983 dollars. However, published estimates of the cost to rehabilitate lands affected by past coal mining activities have exceeded $30 billion. The current program will result in the collection of approximately $3 billion and will resolve approximately 10 percent of the national problem through the use of State and Tribal share funds (50 percent of total collections). Expenditure of all money generated from both share (State/Tribal and Federal) would result in something less than 20 percent of the problem being resolved.

Estimates indicate that approximately 40-45 percent of these lands contain additional recoverable reserves that today can be mined with economic benefits. The intent of section 24 is to provide a limited incentive to remine abandoned coal mining sites through a very limited exclusion of discharge of pollutants occurring at the abandoned sites from effluent limitations established pursuant to the Federal Water Pollution Control Act. In the absence of remining, these discharges would continue in view of the limited resources available for reclamation of abandoned mines. Remining, however, would be subject to the requirements of the Surface Mining Control and Reclamation Act, which would result in reclamation of the site.

There are a number of provisions in the Surface Mining Act and regulations designed to protect the quality of water in areas where surface coal mining operations are being conducted. The Act reflects the understanding that there is likely to be some temporary disruption to water quality and quantity during the actual mining process. The operator, whether proposing a new or remaining operation, is required to submit in his permit application a determination of the probable hydrologic consequences of the operation on surface and groundwater quantity and quality. This will be based on baseline hydrologic, geologic and other information collected as part of the permit application. The baseline hydrologic data will be collected for a minimum of six months prior to mining but sufficient to show seasonal variations in quantity and quality. It will address acid forming and potentially toxic materials which could contaminate surface or groundwater. The regulatory authority must then perform a cumulative hydrologic impact assessment based upon previous and predicted mining operations. In addition, there are numerous other performance standards to ensure proper reclamation and protection of public health and safety.

Because reclamation techniques require some form of regrading, surface hydrology in most cases would improve from controlling the quantity and direction of flow. Quality of surface flow is enhanced through reclamation because many potential point-source discharges of poor quality water would be eliminated through filling, grading, and revegetation. These beneficial impacts to surface hydrology typically range from minor to significant, depending on site conditions, and are of long duration.

### SECTION 20

Section 304(a)(1) of the Act directs the Administrator to develop and publish criteria for water quality accurately reflecting the latest scientific knowledge on the kind and extent of all identifiable effects on health and welfare. Section 20 amends this provision by adding the requirement that, in developing, publishing and revising criteria, the Administrator shall consider, among other things, the effects on the ecosystem of water hardness, pH, chemical and physical interactions, persistence of pollutants and the long-term effects of pollutants, sedimentation from chemical reaction of pollutants, the absorptive properties of sediments, resuspension, and bio-uptake.

Subsection (b) of section 20 adds the requirement that in the development of new or revised criteria with respect to a pollutant, whenever the Administrator determines that a well-founded and significant difference of opinion exists as to the latest scientific and research knowledge on the matters referred to in the section, the Administrator shall publish a description of this difference of opinion along with the publication of the criteria.

Subsection (b) also provides that new or revised criteria should be established so as to provide an ample margin of safety to protect human health and fish and wildlife resources.

### SECTION 21

Subsection (a) of this section adds a new paragraph (5), including two subparagraphs, to section 307(b) of the Federal Water Pollution Control Act. Section 307(b) requires the Administrator to promulgate national categorical pretreatment standards for the control of pollutants introduced by industrial dischargers into publicly owned treatment works.

New subparagraph (5)(A) authorizes the Administrator to establish a single compliance date for any source—also referred to as any indirect discharger—which is subject to two or more pretreatment standards that have been promulgated before the date of enactment of H.R. 3282. The single compliance date shall apply to all of the pretreatment standards applicable to the source and promulgated before the date of enactment, shall apply only to those already-promulgated and applicable standards, shall only be granted to sources which make application for the single compliance date, and shall not be later than one year after the earliest applicable pretreatment standard compliance date or not later than the date for compliance specified in the last promulgated pretreatment standard applicable to the source, whichever comes first. The Administrator shall not establish a single compliance date unless the applicant demonstrates to the satisfaction of the Administrator that

The establishment of a single compliance date will result in compliance by the applicant with all such standards earlier than would be the case in the absence of such single date; and

The technology which is the basis for one of the applicable pretreatment standards is inconsistent with the technology which is the basis for another of the applicable pretreatment standards, or the pretreatment standard with the later compliance date requires sufficient additional technology to justify such single compliance date.

Any application by a source under this paragraph for a single compliance date shall be made not later than 30 days after the date of enactment of this subparagraph. The Administrator shall provide public notice of such application not later than two weeks after its receipt and shall either approve or deny such application within 60 days after the last day of such two-week period.

The Federal Water Pollution Control Act requires the Administrator to establish mandatory national pretreatment standards to prevent the discharge of any pollutant into publicly owned treatment works which interferes with, passes through, or is otherwise incompatible with the works. The Act specifies a time for compliance not to exceed three years from the date of promulgation of a standard and focuses on the control of toxic pollutants for the 65 classes of industrial and commercial discharges in specific industrial categories determined to be the most significant sources of 126 priority toxic pollutants.

The Administrator has implemented these requirements through the promulgation of General Pretreatment Regulations, which establish standards common to all industries, and industry-specific Categorical Pretreatment Standards for the 25 specific industrial categories determined to be the most significant sources of toxic pollutants. This approach requires an industrial discharger which combines wastestreams and is subject to multiple categorical pretreatment standards to comply sequentially with each categorical standard as it is promulgated. Such industrial dischargers are commonly referred to as integrated facilities.

Under the scheme of the Act and the Agency's implementing regulations, integrated facilities must meet more than one deadline for compliance, since more than one pretreatment standard applies to these facilities and since the Administrator has promulgated the categorical pretreatment standards with different compliance dates for each standard.

The Committee has responded to this situation under subsection (a) of section 21 by providing integrated facilities with an alternative to sequential compliance with each applicable categorical standard as it is promulgated. Subsection (a) authorizes the Administrator to establish a single compliance date for an integrated facility, at the request of the facility, for all pretreatment standards promulgated prior to enactment of this provision and applicable to the facility. Under subsection (a), at least the earliest of an integrated facility's categorical pretreatment standard compliance dates would be deferred and the latest would be accelerated, both to a single date, resulting in total compliance for the facility at an earlier date than would be the case in the absence of a single compliance date. Where the first and last pretreatment standards have compliance deadlines one year or less apart, the single compliance date established by the Administrator must be earlier than the date of compliance with the last standard required.

Subsection (b) of section 21 extends the date of compliance with the electroplating pretreatment standards to December 31, 1984.

Current law, by regulation, requires non-integrated facilities covered by the electroplating categorical pretreatment standards to comply with those standards by April 27, 1984; integrated facilities must be in compliance by June 30, 1984. Subsection (b) extends the compliance date for both types of facilities to December 31, 1984.

The Committee anticipates that expeditious and orderly progress towards obtaining compliance with the electroplating pretreatment standards by the regulated sector and towards implementing the pretreatment program by the Agency will be made.

Subsection (c) of section 21 directs the Administrator to increase the number of employees in the Agency in order to effectively implement the Federal Water Pollution Control Act's pretreatment requirements.

The Committee believes that insufficient Agency resources are being dedicated to regulatory and implementation activities relating to the National Pretreatment Program. This program has been surrounded by controversy since 1972 and it is only now on the verge of being implemented nationwide. Of the approximately 1675 publicly-owned treatment works required to develop pretreatment programs under the Federal regulations, only 371 had approved programs as of the beginning of fiscal year 1984. During fiscal year 1983, only 306 programs were approved. If the Agency's goal of having all 1675 programs approved and functioning by the end of fiscal year 1985 is to be achieved—a goal the Committee shares and would even like to see exceeded—far more resources than are currently being budgeted for this effort will be required.

The Committee believes that EPA resources dedicated to pretreatment program approval and enforcement activities should be substantially increased compared to levels assumed in the proposed budget. The Agency has estimated that it will take fifteen days to review each POTW application for pretreatment program approval. Based on the number of approvals already made, the number projected to be made before the end of FY 85, and the level of resources currently being proposed for pretreatment program efforts, the Agency will barely be able to meet its stated goal of having all 1675 programs approved by September 30, 1985. However, to achieve this level of program approvals, the Agency will have to dedicate all of its currently budgeted resources to the effort, having virtually none available for reviewing State program delegation applications (40 days required per application), reviewing baseline monitoring reports for compliance with EPA regulations (4–8 day per report), processing removal credit applications (20 days per application), providing necessary support functions for enforcement actions (10–20 days per enforcement action against an industrial user and the same for each action against a POTW), monitoring a POTW's implementation of its program (15 days per POTW), and monitoring a State's implementation of its pretreatment program (10 days), to list just a number of pretreatment program functions that must also be performed. The Committee is convinced for these and other reasons that substantial additional revenues will be required for the pretreatment program in FY 85 and beyond.

Subsection (d) of section 31 amends section 307 of the Federal Water Pollution Control Act to authorize the owner or operator of a publicly owned treatment works to grant up to a two-year extension for compliance with a categorical pretreatment standard to an indirect discharger that intends to comply with such applicable standard by using an innovative treatment system that meets the criteria specified in section 301(k) of the Act, if (1) the Administrator determines that the innovative system has the potential for industry-wide application and the action will not cause the publicly owned treatment works to violate its NPDES permit, and (2) the Administrator or a State having an approved pretreatment program concurs with the proposed action of the owner or operator of the publicly owned treatment works.

Section 301(k) of the Federal Water Pollution Control Act currently authorizes an extension of the date for compliance with certain best available technology treatment requirements for direct dischargers where the applicable innovative technology or process installed by the direct discharger has potential for industry-wide application and achieves either significantly greater pollutant reduction compared to that required by the applicable effluent limitations or achieves the required reduction at significantly lower cost. Subsection (d) is intended to provide the same kind of innovative technology deadline extension for indirect dischargers as is provided in section 301(k) of the Federal Water Pollution Control Act, as amended by section 18 of H.R. 3282, for direct dischargers. In this way, the Committee intends to provide an additional incentive to the development of new and better techniques to control the discharge of pollutants.

The purpose of this amendment is to encourage the development of innovative processes and control technologies. It is not in any way intended to provide a means for delay in compliance with the deadlines established in the Act. The Committee thus understands "innovative system" to be one which has not yet been demonstrated on a commercial scale under operating conditions in any industry; is proposed for application in a very few plants; and is unlikely to be installed without this encouragement. Additionally, this provision is not intended to allow delays by other companies awaiting the results of the demonstration.

### SECTION 22

This section amends section 309 of the Federal Water Pollution Control Act to provide that dischargers or individuals who knowingly violate or cause the violation of certain of the Act's requirements will be subject to criminal penalties of up to $50,000 per day and/or imprisonment for up to two years.

Under section 22, punishment by fine of between $2,500 and $25,000 per day, or imprisonment for up to a year, or both, is required with respect to (1) any person who negligently violates section 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act, or any permit condition or limitation implementing any of these sections in an NPDES permit, or any requirement imposed in an approved pretreatment program, or any requirement in a dredge and fill permit under section 404 of the Act; or (2) any person who negligently introduces into a sewer system or a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes the treatment works to be in violation of its NPDES permit requirements. Second and subsequent violations shall be punished by a fine of not more than $50,000 per day, or by imprisonment of up to two years, or both.

Section 22 also requires punishment by fine of between $5,000 and $50,000 per day, or imprisonment for up to two years, or both, for (1) any person who knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation implementing any of these sections in an NPDES permit, or any requirement imposed in an approved pretreatment program, or any requirement in a dredge and fill permit under section 404 of the Act; or (2) any person who knowingly introduces into a sewer system or a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes the treatment works to be in violation of its NPDES permit requirements. As with negligent violations, for subsequent knowing violations, the maximum punishment which may be imposed for these knowing violations is twice that pertaining to the initial violation.

The section provides, for both of these negligent or knowing violations, an affirmative defense that the introduction of any pollutant or hazardous substance into the sewer system or treatment works was in compliance with all applicable Federal, State, and local requirements governing the introduction.

Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Act shall upon conviction be punished by a fine of up to $10,000 per day or imprisonment for up to two years, or both. Second and subsequent convictions shall be punished by a fine of up to $20,000 per day of violation, or by imprisonment of up to four years, or both.

For the purpose of section 22, the term "person" means any responsible corporate officer in addition to the definition of the term in section 502(5) of the Federal Water Pollution Control Act. The term "hazardous substance" means any substance designated pursuant to section 311 of the Federal Water Pollution Control Act; any element, compound, mixture, solution, or substance designated under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; certain hazardous wastes having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act; any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act; and any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

Presently the Federal Water Pollution Control Act has no provision that deals with knowing violations of major statutory or regulatory requirements. Section 22 is intended to be used primarily to address intentional violations of the Act occurring on a regular basis over an extended period of time that result in significant harm to public health or the environment. The section is intended to provide for imposition of severe penalties for such actions.

### SECTION 23

This section authorizes the assessment of civil penalties for violations of the Act. Whenever on the basis of any information available to him the Administrator finds that any person is in violation of sections 301, 302, 306, 307, 318, or 405 of the Act or is in violation of any permit condition or limitation implementing any of these sections in a permit issued under section 402 of the Act, he may, after consultation with the State in which the violation occurs, assess a civil penalty of not more than $10,000 per day of violation, except that the penalty shall not exceed a total of $75,000. The Secretary of the Army is given similar authority in connection with permits issued by him under section 404 of the Act, which relates to the discharge of dredged or fill material.

A civil penalty is assessed under this provision by the Administrator or the Secretary, as the case may be, by an order made on the record after opportunity for a hearing. Before issuing such an order, the Administrator or the Secretary is required to give written notice to the person to be assessed the civil penalty of the proposal to issue such an order and is required to provide the person with an opportunity to request, within 15 days, a hearing on the order.

In determining the amount of the civil penalty the Administrator or the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, the ability to pay, the effect on the ability to continue to do business, any history of prior violations, the degree of culpability, economic savings resulting from the violation and such other matters as justice may require.

The Administrator or the Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this provision.

Any person who requested a hearing with regard to the assessment of his civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of the order with the United States Court of Appeals for the District of Columbia Circuit or for any other Circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making the assessment was issued.

If any person fails to pay an assessment of his civil penalty, after the order making the assessment has become a final order, and where the person does not file a petition for judicial review of the order, or after the court has enter a final judgment in favor of the Secretary or the Administrator, the Attorney General shall recover the amount assessed in an action brought in any appropriate District Court of the United States.

The Administrator and the Secretary are given the authority to issue subpoenas in connection with hearings under this provision and may request the Attorney General to bring an action to enforce any subpoena.

Any violation with respect to which any civil penalty is imposed under this provision is not subject to a civil penalty under section 309(d) or section 311(b) of the Federal Water Pollution Control Act.

When a State has proceeded with an enforcement action relating to a violation with respect to which the Administrator or the Secretary is authorized to assess a civil penalty under this provision, the Administrator and the Secretray are not authorized to take any action under this subsection if the State demonstrates that the State-imposed penalty is appropriate.

### SECTION 24

This section contains a number of amendments to section 314 of the Federal Water Pollution Control Act, which establishes a grant assistance program to improve the water quality of lakes.

Subsection (a) of section 24 deletes the reference to "fresh water" in section 314(a)(1) in order to make the Clean Lakes Program applicable to saline, as well as fresh water, lakes. The Committee believes that lakes which are saline, both inland and those connected to bays, estuaries or other saline waters where salinity from those sources enters the lake, should not be excluded from the water quality improvement program for lakes under section 314.

Subsection (b) of section 24 consists of technical amendments to existing law to reflect the amendments made by section 24.

Subsection (c) adds a number of new subsections to section 314.

New subsection (d) provides that the Administrator shall make grant to States for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The amount to the State for such a project shall not exceed 70 percent of the cost of the project. There is authorized to be appropriated not to exceed $100 million per year for the Fiscal Years 1985 through 1989 for these purposes.

New subsection (e) provides that any State may prepare and submit to the Administrator for approval a survey of water quality deterioration lakes and other waters in the State which has resulted from high acidity and methods and procedures which may be applied to lakes and other waters in the State to restore water quality insofar as quality has deteriorated because of high acidity. The Administrator shall make grants to States to carry out these methods and procedures, as approved by the Administrator. The amount granted to any State for any fiscal year shall not exceed 80 percent of the funds expended by the State in that year for carrying out approved methods and procedures. Such methods may include, but are not limited to, innovative methods of neutralizing and restoring buffering capacity of lakes and other waters that have become so acidic as to endanger game fish species, and methods of removing from lakes and other bodies of water toxic metals and other toxic substances mobilized by high acidity. The Administrator shall provide for an equitable distribution of sums among States with approved methods and procedures, with the distibution to be based on the relative need of each State for the restoration of water quality which has deteriorated as a result of high acidity. The amount of any grant to a State under this subsection is to be in addition to, and not in lieu of, any other Federally-financed assistance. To carry out new subsection (e) there is authorized to be appropriated $25 million per fiscal year for each of the fiscal years 1985 through 1989.

New subsection (f) directs the Administrator to submit annually to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works a report on the status and trend of water quality in lakes in the United States, including, but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

New subsection (g) directs the Administrator to study, in cooperation with the State of Texas, water quality problems in Lake Houston, Texas, and undertake such control measures as determined necessary to improve water quality. The study will include, but not be limited to, evaluating the feasibility of regional or consolidated waste treatment facilities and developing recommendations for cost-effective control of pollutants entering the Lake Houston watershed. A report is to be submitted to the Committee on Public Works and Transportation of the House and the Committee on Environment and Public Works of the Senate.

Lake Houston is a 12,000 acre lake located in the northeast section of Houston, Texas. The lake provides about 40 percent of the drinking water for the City of Houston. It is also used by thousands of residents of the Houston area for a wide range of recreational activities. At present, there is great concern that high fecal coliform counts indicate a potential serious health hazard. Given the key role played by Lake Houston in the area, the Committee believes priority action is warranted.

There has been extensive development in the vicinity of Lake Houston and a large number of very small treatment plants have been put in place in the watershed. Most of these treat less than 1 million gallons per day. Overloading, poor performance, or lack of proper operation and maintenance of these small plants may be significant factors in the water quality problems being experienced at Lake Houston. The Committee is directing that these and other factors be studied and measures taken to eliminate water quality problems. One approach for consideration is consolidating the smaller treatment plants into larger, more effective sewage treatment systems.

New subsection (h) directs the Administrator, in cooperation with the Secretary of the Army, and in consultation with State and local agencies, to conduct a one-year study of Beaver Lake, Arkansas, and then undertake a demonstration project at Beaver Lake to determine the effectiveness of measures identified in the study. The study is to find means to optimize achievement of the purposes for which Beaver Dam was constructed while preserving and enhancing the quality of the reservoir's water. Following the demonstration project, the Administrator shall submit a report on the study and the project, along with recommendations for further measures to improve the water quality of Beaver Lake. This report will be submitted to the Committee on Public Works and Transportation of the House and the Committee on Environment and Public Works of the Senate. To carry out this subsection, funds appropriated under subsections (c, (d), (e), of section 314 of the Federal Water Pollution Control Act and section 52 of H.R. 3282 are available.

Beaver Lake is on the White River in northwestern Arkansas, in the Ozark highlands. Beaver Dam, behind which the lake is impounded, was completed by the U.S. Army Corps of Engineers is 1965 and impounds nearly 2 million acre-feet of storage. It is operated in conjunction with other lakes in the White River basin to prevent flood damages down river. It also serves as an important source of hydroelectric power and water supply. In addition, there are eleven parks around the lake, providing substantial recreational opportunity. A high level of water quality is needed to maintain the varied uses of Beaver Lake. The comprehensive, one-year study followed by a thorough demonstration project, will provide the opportunity for improvements in the water quality of the lake.

New subsection (i) directs the Administrator to undertake a demonstration project for the removal of silt, stumps and other obstructions from Greenwood Lake and Belcher Creek, New Jersey. Upon completion of the demonstration project, the Administrator is to submit a report, along with recommendations for further measures to improve the water quality of Greenwood Lake and Belcher Creek, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works. There is authorized to be appropriated $10 million to carry out this subsection.

New subsection (j) directs the Administrator to undertake a demonstration project for the removal of silt and stumps from, and the control of pollution from nonpoint sources in, Deal Lake, Monmouth County, New Jersey. Upon completion of the demonstration project, the Administrator is to submit as report on the project, along with recommendations for further measures to improve the water quality of Deal Lake, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works. There is authorized to be appropriated $8 million to carry out this subsection.

New Subsection (k) directs the Administrator to undertake a demonstration project for the restoration of Alcyon Lake in New Jersey including removal and disposal of contaminated sediments in the lake. Upon completion of the project, a report is to be submitted to the House Committee on public Works and Transportation and the Senate Environment and Public Works Committee, together with recommendations for further cleanup measures.

### SECTION 25

Section 402(b)(1)(B) of the Federal Water Pollution Control Act currently provides that permits for the discharge of pollutants are to be for fixed terms not exceeding five years.

Subsection (a) of section 35 amends this provision to provide that permits are for fixed terms not to exceed ten years, except in the case of a permit which modifies any requirement of the Act's sections 301(c), (g), (h), or (m) of the Federal Water Pollution Control Act—relating to extensions of compliance dates for direct dischargers where innovative technology is involved, modifications of compliance dates for pollutants other than toxic pollutants, modifications of technology requirements where an ocean outfall is involved and effluent limitations for certain pulp mills—and except in any case in which the State determines that the applicant has not consistently complied with any permit held by the applicant. In such excepted cases, permits shall be issued for fixed terms not exceeding five years. In carrying out this provision, the Administrator should consider, among other things, the frequency and significance of any instances of noncompliance by the permittee.

Subsection (a)(2) requires that permits must be modified promptly to insure compliance with any new or revised toxic pollutant effluent limitation under section 307(a) of the Federal Water Pollution Control Act, or any new or revised requirement pursuant to a standard under section 303 of this Act which limitation or requirement is more stringent than the existing effluent limitation or requirement in the permit or which controls a pollutant not controlled in the permit.

The burden placed upon the Agency and the States by virtue of the numerous permits that must be issued or renewed each year has, among other things, led to extended delays in the permitting process. In order to help relieve these burdens and to expedite the process for the Agency, States, and permitees alike, section 25(a) authorizes the issuance of certain permits for terms of up to ten years.

The Agency and the States are issuing most permits for a second time. Since initial permit issuance, a great deal of familiarity and experience has been gained both with the permitting process and with specific permits and permittees. In many cases, this justifies an extended permit term. However, the Committee recognizes that for some permits the ten year term may be inappropriate. Specifically, for those permits issued pursuant to the waiver or modification provisions of section 301(c), (g), (h), or (m), a five year maximum permit term is established.

In addition, nothing in this provision infringes on the Agency's ability to establish shorter permit terms where the Agency deems it appropriate. Given the wide variety of permits and recognizing that the Agency is just beginning to issue many major permits with toxic limitations for the first time, it is understood that EPA will need the flexibility to set maximum permit terms of less than ten years for some dischargers.

Subsection (b) of section 25 of the bill provides that the Administrator shall not require a permit under section 402 or directly or indirectly require any State to require such a permit for discharges of stormwater run-off which (1) are from mining operations or oil or gas exploration, production, processing, or treatment operations, (2) are composed entirely of flows from conveyances or systems of conveyances used for collecting and conveying precipitation runoff; and (3) are not contaminated with process wastes, overburden, raw materials, toxic pollutants above background levels, spilled product, oil, grease, or hazardous substances.

Any person discharging stormwater run off described in the preceding sentence shall monitor the quality of water in such flows and shall report not less often than annually to the Administrator on the results of such monitoring.

The subsection was developed by the Committee in recognition of the fact that there are numerous situations in the mining and oil and gas industries where stormwater is channeled around plants and operations through a series of ditches and similar devices in order to prevent pollution contamination of the stormwater. Many of these stormwater run-off devices are voluntary means of pollution control. For example, many mining operations located in mountainous and snow-packed areas collect run-off around the mine sites to keep such water from coming into contact with and being contaminated by process water or materials. The Committee believes that, to avoid penalizing operators for using good management practices designed to prevent or minimize pollution and for making expenditures to prevent stormwater run-off contamination, uncontaminated stormwater diversion devices should not be regulated under the permit scheme of the Act.

Subsection (c) amends section 402 of the Federal Water Pollution Control Act by adding new subsections (m) and (n). New subsection (m) provides that, in issuing a permit to a publicly owned treatment works, the Administrator shall not require additional pretreatment by any indirect discharger of conventional pollutants introduced into the treatment works as a substitute for inadequate pollution removal by the treatment works due to design or operation problems for which the treatment works is responsible. Indirect dischargers into the works must still comply with all applicable pretreatment standards promulgated under the Federal Water Pollution Control Act. Nothing in this subsection affects the Administrator's authority under sections 307 and 309 of the Act, affects State and local authority under section 307(b)(1) (pretreatment programs) or section 510 (state authority to establish limitations on discharges of pollutants), relieves the treatment works from its obligations to meet requirements of the Act, or otherwise precludes the treatment works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit.

When a publicly owned treatment works is failing to meet its permit limits due in whole or in part to a failure by the treatment works in its responsibilities, the Administrator shall not require pretreatment of conventional pollutants by indirect discharges to remedy that problem. This provision simply recognizes that in such circumstances the burden of correcting the problem lies with the publicly owned treatment works itself through adjustment of its facilities or operation. The language of this provision makes clear, however, that discharges of conventional wastes must be in compliance with all applicable pretreatment limitations and prohibitions. In addition, this subsection is not designed to interfere with EPA's enforcement authorities, State and local pretreatment authorities, or a municipality's responsibilities and options to treat or require pretreatment in order to comply with its permit requirements.

New subsection (n) allows partial delegation to the States of the Act's NPDES program. Under this provision, the Governor of a State may submit and the Administrator may approve a partial permit program for point source discharges into the navigable waters of the State where the State's partial permit program covers, at a minimum, either administration of a major category of the discharges into the State's navigable waters or a major component of the State's NPDES permit program. With respect to a partial permit program covering administration of a major category of discharges, the Administrator is authorized to approve such a program if the program covers in a complete fashion all of the discharges under the jurisdiction of a department or agency of the State and if the Administrator determines that the partial program represents a significant and identifiable part of the State's NPDES program. With respect to a partial and phased permit program covering a major component of the State's NPDES program, the Administrator is authorized to approve such a program if the Administrator determines that the partial program represents a significant and identifiable part of the State's NPDES program and if the State submits and the Administrator approves a plan for the State to assume administration by phases of the remainder of the State's NPDES program within five years.

The Committee believes that authorizing partial and phased approval of State permit programs will greatly benefit efforts to increase individual States' NPDES program implementaton activities. With phased approval, States will be able to gradually assume responsibility for portions of the NPDES program over a specified period of time leading to full administration of the program by the end of the specified period. This will be particularly helpful to States having resource or other constraints which currently preclude full administration by allow something less than that at this time. Other States will benefit from the provision's authorization for a State to assume permitting authority over one or more discharge categories representing a major part of the State's permit program. For example, States with jurisdiction over point source regulation split among two or more State agencies, could apply for and receive authority to implement the permit program for all categories of discharges under the jurisdiction of one or more of its agencies.

It is the Committee's understanding and intent that, under the language of new subsection 402(n), at least the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas could qualify for partial NPDES program delegation.

Subsection (d) of section 25 of H.R. 3282 amends section 402(c) of the Federal Water Pollution Control Act to provide that a State may return or the Administrator may withdraw approval of delegated NPDES program responsibilities. In the case of an approved partial permit program covering administration of a major category of a State's point source discharges, the entire permit program related to that category and being administered by one of the State's department or agencies must be returned or withdrawn. Partial programs relating to other categories and being administered by other of the State's departments or agencies, if such is the case, may remain delegated. In the case of an approved partial and phased program covering administration of a major component of a State's NPDES program, any approved phased component must be returned or withdrawn.

### SECTION 26

This section amends section 502(14) of the Federal Water Pollution Control Act to provide that the term "point source" of pollution does not include agricultural stormwater discharges.

### SECTION 27

This section authorizes the Administrator to make a grant to the City of New York to install such additional facilities in, and make such modifications to, the Newtown Creek sewage treatment plant as are necessary for the plant to provide secondary treatment. The Federal share of the project is 75 percent of the cost of installing such facilities and making such modifications. There is authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years beginning after September 30, 1984, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

### SECTION 28

Subsection (a) of this section directs the Administrator, upon application of the City of San Diego and for purposes of protecting the City and surrounding areas, to make grants to San Diego for a project consisting of publicly owned treatment works to provide primary or more advanced treatment of (1) not less than 60 million gallons per day of municipal sewage and industrial wastes emanating from the City of Tijuana, Mexico, and (2) such amount of municipal sewage and industrial waste for the City of San Diego as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

Subsection (b) provides that any treatment works funded under the section shall be constructed in accordance with plans developed by the City of San Diego and approved by the Administrator. Such plans shall be drawn to meet whatever construction standards would be applicable if the works were being constructed under the Federal Water Pollution Control Act's section 201 Construction Grants Program.

Subsection (c) requires the overall project authorized by section 33 to provide capacity to treat municipal sewage and industrial wastes for both of the cities of Tijuana and San Diego.

Subsection (d) provides that all of the provisions of the Federal Water Pollution Control Act which are applicable to construction grants made under subsection 201(g) of that Act shall also apply to any grant made under section 33 to provide treatment for the City of San Diego.

Under Subsection (e), the Federal share of the cost to construct treatment works to treat pollutants emanating from Tijuana shall be at full Federal expense less any amounts received from the Government of Mexico. The Committee strongly intends that negotiations should proceed at the earliest possible time, and as a matter of high priority, to secure agreement with the Government of Mexico leading to an appropriate contribution from the government of Mexico toward the project's construction, operation, and maintenance.

Subsection (f) authorizes the Administrator, upon application of the City of San Diego, to issue an NPDES permit of limited duration which modifies the requirements of section 301(b)(1)(B) of the Federal Water Pollution Control Act to permit the discharge through an ocean out fall of effluent which has received primary or more advanced treatment—but less than secondary treatment—by facilities constructed with Federal assistance under the Water Quality Renewal Act of 1984.

Subsection (g) provides that, in the event the treatment works constructed under section 33 to treat Mexican sewage and waste has capacity which is no longer necessary to provide such treatment, any such capacity may be used to provide treatment for the City of San Diego.

Subsection (h) defines the terms "construction" and "treatment works" for purposes of section 33 in the same way as those terms are defined under section 212 of the Federal Water Pollution Control Act.

Subsection (i) authorizes the appropriation of such sums as may be necessary for fiscal year 1985 and beyond to make grants under the section.

Section 28 is intended to address one of the most serious water pollution problems currently being experienced in the United States.

The City of Tijuana, located at the border of California and Baja California Norte, Mexico, presently generates approximately 20 million gallons of sewage per day. In the future, as the City's rapidly expanding population continues to grow beyond the current one million inhabitant level, and as running water is provided to more of the city's homes, the amount of sewage emanating from the city will also greatly increase.

Tijuana has neither a reliable sewage collection system nor a fully operating wastewater treatment facility. Consequently, discharges of untreated and partially treated sewage from Tijuana to the ocean at Playas de Tijuana, in addition to sewage beaches and territory in the Tijuana River contributed to the contamination of U.S. beaches and territory in the Tijuana Rive Valley region. This contamination has not only had an adverse economic impact on the U.S. communities in the region, it also poses a severe health hazard to citizens on both sides of the border. In August of 1983, for example, more than 6 million gallons per day of Tijuana sewage were flowing into the ocean near Imperial Beach, California. This forced the closure of Imperial, Silver Strand, and Coronado Beaches where water sample indicated the contamination to be as high as 100 times the level considered safe. Unfortunately, this was not an isolated incident. Beaches north of the border were quarantined for 307 days in 1980, 219 days in 1982, and 309 days in 1983 because of pollution emanating from Tijuana.

Section 28 provides authorization for the construction of wastewater treatment works having such capacity as may be determined necessary by the City of San Diego with concurrence of the Administrator to provide for the long-term sewage treatment needs of both the City of Tijuana, Mexico, and the City of San Diego. Further, section 28 may permit initial or interim phases of the sewage treatment works to provide less than primary treatment, provided, however, that such phases shall be compatible with and convertible to a treatment facility with primary or more advanced treatment.

With regard to treatment works authorized for sewage and industrial waste for the City of Tijuana, Mexico, it is fully expected that the Administrator will expeditiously process any application by the City of San Diego for a permit, under section 402 of the Clean Water Act, to modify requirements for secondary treatment in order to discharge through an ocean outfall.

### SECTION 29

This section provides that, for purposes of protecting the economy, public health, environment, and surface and ground water of the community of Naco, Arizona, which are in danger and are being polluted by raw sewage emanating from the community of Naco, Sonora, Mexico, upon application of the County of Cochise, Arizona, the Administrator of the Environmental Protection Agency shall make grants to such county for construction of a project consisting of a publicly owned treatment works to provide primary or more advanced treatment of not less than 150,000 gallons of untreated sewage emanating from the City of Naco, Sonora, Mexico, and treatment of waste from Naco, Arizona.

Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the County of Cochise, Arizona, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the City of Naco, Sonora, Mexico and the community of Naco, Arizona.

All provisions of the Federal Water Pollution Control Act which are applicable to grants made under section 201(g) of such Act shall apply to grants made under this section to provide treatment of municipal sewage and industrial waste for the community of Naco, Arizona.

The Federal share of the cost of construction of the treatment works to provide treatment of municipal sewage and industrial waste for the city of Naco, Sonora, Mexico shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste for the city of Naco, Sonora, Mexico, has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the community of Naco, Arizona.

For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

There is authorized to be appropriated to the Administrator $2,000,000 to make grants under this section for fiscal years beginning after September 30, 1984.

Since early 1977 the United States has negotiated with Mexico regarding immediate and long-term solutions to the problems of chronic sewage discharges into Greenbush Draw from the Naco, Sonora treatment facilities. The City of Bisbee and County of Cochise have supplied equipment and manpower for repairs on many occasions, with funding from the International Boundary and Water Commission. However, because of frequent damage from heavy rains, inadequate maintenance of facilities, increased sewage load, and the strained economic conditions in Naco, Sonora, the frequency of sewage overflow from the treatment ponds and manholes in Naco, Sonora has increased in the last three years.

The groundwater production facilities for Bisbee, Arizona which are owned and operated by Arizona Water Company, are located in Greenbush Draw, approximately one mile downstream from the international boundary. The sewage discharge from Naco, Sonora threatens to contaminate the aquifer which supplies all of the City of Bisbee's drinking water. The sewage load to Naco, Sonora is currently 132,000 gallons per day; this load was flowing unchecked into Greenbush Draw in December 1983. As an emergency measure to prevent this sewage from reaching the Arizona Water Company well field, a diversion and impoundment were constructed on private property in Naco, Arizona again using funding from the International Boundary and Water Commission. This holding pond is unacceptable as a long-term measure and is not adequate to retain sewage flows in the event of heavy seasonal rains which are typical of southern Arizona nor to eliminate the threat of groundwater contamination.

### SECTION 30

Subsection (a) of this section provides that after March 15, 1986, the City of New York shall not discharge raw sewage into navigable waters in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily discharge of raw sewage by the City of New York during the 12-month period preceding March 15, 1986, as determined by the Administrator of the Environmental Protection Agency, except as provided in subsection (b) of this section.

Subsection (b) provides that, in the event of any significant interruption in the operation of a wastewater treatment plant which is operated by the City of New York, the Administrator of the Environmental Protection Agency may waive the limitations of subsection (a), but only to such extent and for such limited period of time as may be reasonably necessary for such City to resume such operation.

Significant interruptions include situations which are beyond the control of the City of New York, such as accidents or acts of God causing damage to the plants or to construction equipment.

The Administrator of the Environmental Protection Agency is directed to undertake measures, including modifications of schedules of compliance, to reduce and eliminate at the earliest practicable date, the discharge of raw sewage by the City of New York taking into account any increase in the authorization for grants for construction of treatment works made by H.R. 3282 and standards and practices which are necessary for the attainment of that water quality which assures protection of public water supplies, protection of the public health, and the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, and allows recreational activities in and on the water.

This section in no way modifies the obligations of the City of New York to achieve secondary treatment as required by the Federal Water Pollution Control Act and any consent decrees entered into by the Environmental Protection Agency, the State of New York, the City of New York, and other parties, or any compliance orders or schedules imposed by the Administrator. It does not permit the indefinite discharge of raw sewage at the March 15, 1986 level. Rather, it places a limitation on the amount of discharge of raw sewage which may occur as the City continues its efforts to achieve full secondary treatment of all of its sewage.

### SECTION 31

This section allows the Okolona Sewer Construction District in Jefferson County, Kentucky, to continue to operate its wastewater treatment works—without being required to use any other wastewater treatment facility—until completion of the West County Wastewater Treatment Plant in Jefferson County. The section also requires the Administrator to issue a National Pollutant Discharge Elimination System permit to effectuate the purpose of the section.

This provision is necessary to prevent the Okolona Sewer Construction District from being forced to connect with and discharge into an existing interceptor line leading to a publicly owned treatment works which discharges into the Ohio River. Not only would such a connection lead to unnecessary additional user charges for a community comprising a high percentage of retirees living on fixed and relatively low incomes, but it would also result in Okolona's secondary-treatment-quality effluent being diverted to an existing wastewater treatment plant which is itself incapable of treating incoming wastes to secondary levels. The Committee believes that requiring Okolona to make such a connection would be economically wasteful and directs the Administrator to allow the District's plant to remain in operation with the necessary NPDES permit until construction is completed on a new regional wastewater treatment plant.

### SECTION 32

This section authorizes and directs the Administrator of the Environmental Protection Agency to make grants to the Metropolitan District Commission, Massachusetts, for a project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts. The Federal share of the project shall not exceed 75 percent of the cost of carrying out the improvements. There is authorized to be appropriated to carry out this section $10,000,000 per fiscal year for each of the fiscal years 1985, 1986 and 1987.

### SECTION 33

This section provides that, notwithstanding any provision of the Federal Water Pollution Control Act, the Administrator of the Environmental Protection Agency shall pay, to the extent provided in appropriation Acts, in the same proportion as the Federal share of other project costs, all expenses for the relocation of facilities for the distribution of natural gas with respect to the entire wastewater treatment works known as the Oakwood Beach (EPA Grant Number 360932) and Red Hook (EPA Grant Number 360394) projects, New York. There is authorized to be appropriated for fiscal years beginning after September 30, 1984, not to exceed $9,000,000 to carry out the section.

### SECTION 34

This section provides that, in order to protect the public health, environment, and water quality endangered by the destruction of the Chippewa Township, Pennsylvania, sewage treatment facility and the resultant raw sewage discharge into Brady's Run and the Beaver River, Pennsylvania, the Administrator of the Environmental Protection Agency is directed to remove such raw sewage.

The explosion that destroyed the Chippewa sewage treatment facility led to the discharge of millions of gallons of raw sewage into Brady's Run and the one mile section of the Beaver River, from where it enters the Ohio River upstream to Brady's Run.

Section 34 requires the Administrator to remove the sewage deposited in this reach of the Beaver River and Brady's Run.

### SECTION 35

This section directs the Administrator to study the feasibility and desirability of eliminating the regulation of discharges of pollutants into the navigable waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant. A report, with recommendations, is to be submitted to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works within one year of the date of enactment of H.R. 3282.

### SECTION 36

This section directs the Administrator of the Environmental Protection Agnecy to study the effectiveness on waste treatment of innovative and alternative waste water treatment processes and techniques which have been utilized in treatment processes and techniques which have been utilized in treatment works constructed under the Act. In conducting the study, the Administrator is to compile information, by State, on the types of such processes and techniques utilized and on the number of facilities constructed with such processes and techniques, and a description of such processes and techniques which have not performed to design standards. The Administrator must also determine which States have not obligated the full amount set aside for innovative and alternative facilities constructed with such processes and techniques and the reasons therefor. The Administrator is to submit a report on this study to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works not later than two years after the date of enactment, along with recommendations for providing more effective incentives for innovative and alternative wastewater treatment processes and techniques.

### SECTION 37

Subsection (a) of this section directs the Administrator to study the water quality improvements which have been achieved by application of best available technology. The study must include an analysis of the effectiveness of, and the costs and benefits associated with, application of best available technology and must also include an analysis of methods of improving our Nation's water quality program and its effectiveness. Subsection (a) requires the Administrator, in analyzing methods of improving the water quality program, to study site-specific levels of treatment which will achieve the water quality goals of the Federal Water Pollution Control Act in a cost effective manner.

Subsection (b) requires the Administrator, within two years of the date of enactment of H.R. 3282, to submit a report on the results of the study, together with recommendations for improving the Nation's water quality program and its effectiveness, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works.

### SECTION 38

This secton directs the Administrator to study the testing procedures for analysis of pollutants. The study shall include, but is not limited to, an analysis of the adequacy and standardization of testing procedures. In conducting the analysis of the standardization of such procedures, the Administrator is to consider the extent to which these procedures are consistent with comparable procedures established under other Federal laws. A report on the results of this study is to be submitted within one year, together with recommendations for modifying testing procedures, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works.

Subsection (b) of section 38 directs the Administrator, biennially after the date of submission of the report on testing procedures, to conduct a state-of-the-art review of the testing procedures for the analysis of pollutants for the purpose of determining the adequacy and effectiveness of such procedures and, based on the results of such review, to submit to the Committees recommendations for modifying testing procedures to improve their effectiveness.

### SECTION 39

This section directs the Administrator of the Environmental Protection Agency to conduct a study and make a report with recommendations concerning a number of pretreatment-related issues.

Subsection (a) directs the Administrator to study the adequacy of data on environmental impacts of toxic industrial pollutants discharged through publicly owned treatment works; the extent that secondary treatment by these treatment works removes toxic pollutants; the capability of publicly owned treatment works to grant pretreatment removal credits authorized under section 307(b)(1) of the Federal Water Pollution Control Act; possible alternative regulatory strategies for protecting the operations of publicly owned treatment works from industrial discharges, including an evaluation of how effective each strategy might be in achieving the goals of H.R. 3282 and the Federal Water Pollution Control Act, and, the adequacy under each of the strategies studied of Federal, State, and local resources to establish, implement, and enforce multiple pretreatment limits for toxic pollutants.

Subsection (b) requires the Administrator to submit a report on the study performed under subsection (a), along with recommendations for improving the effectiveness of pretreatment requirements, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works within two years of date of enactment of H.R. 3282.

Section 39 requires the Administrator to study the effectiveness of the National Pretreatment Program. This study is not intended to determine the need for pretreatment or in any way to delay ongoing program implementation. Rather, the study should be used to update and expand information available to the Agency on such matters as the impact on publicly owned treatment works of industrial discharges and the pollution removal effectiveness of publicly owned treatment works technology. In addition, the study should also be used to evaluate the effectiveness—both in terms of pollution removal and cost—of industrial pretreatment controls.

Section 39(a)(3) requires the Administrator to study the capability of publicly owned treatment works to revise pretreatment requirements under section 307(b)(1) of the Federal Water Pollution Control Act. The Committee intends that EPA focus particular attention on the extent to which EPA's pretreatment removal credits program is presently effectuating the Congressional intent behind section 307(b)(1). Congress added the credits system to the Act in 1977 because of its concern that EPA's categorical pretreatment standards could result in costly redundant treatment by industry and publicly owned treatment works. The Committee also intends that, in implementing section 39(a)(3), the Administrator shall examine the capability of publicly owned treatment works to establish and enforce requirements more stringent than or different from national categorical standards.

The Committee's reference in section 39(a)(4) to possible alternative regulatory strategies is meant to include, among other things, consideration of sludge quality in evaluating strategy effectiveness. Section 39(a)(5)'s reference to "adequacy of . . . resources" is meant to include evaluation of technical expertise and availability of analytical methods as well as financial and staffing level evaluations.

### SECTION 40

This section provides that, in order to protect the Federal and other investment in treatment works, the Administrator shall conduct a study of the problem of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate this problem, and the range of available options to deal with the effects.

The study required is to be conducted in consultation with the Los Angeles City and County sanitation agencies which have observed examples of corrosion, probably caused by sulfides. The Administrator shall submit a report on the results of the study, together with recommendations for measures to reduce the corrosion of treatment works, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate within one year of the date of enactment of H.R. 3282. There is authorized to be appropriated $2,000,000 to carry out this section for fiscal years beginning after September 30, 1984.

In recent years in Southern California, it has become apparent that sulfide corrosion of concrete sewers and wastewater treatment facilities is creating severe damages. The causes of sulfide corrosion of concrete structures include high strength sewage, high temperature, acidic wastewater, lack of aeration of sewage and low cleaning velocities in the sewer sysem. THe climatic conditions in Southern California and the use of sanitary sewers which do not accept rainfall tend to promote conditions causing sulfide corrosion. The lack of rainfall tends to eliminate the periodic flushing and cleaning of the sewer slimes which create sulfides. In less desert-like climates this periodic flushing of sewers tends to reduce sewer corrosion problems.

The existence of sulfides in large concrete sewers throughout the Los Angeles basin results in the formation of sulfuric acid which corrodes the sewers and creates the potential for sewer collapse.

It is necessary to perform an extensive evaluation of the interactions of the many factors that may be causing sulfide corrosion of sewerage structures. The interrelated remedial effects of the peroidic cleansing of concrete sewers, the effectiveness of adding chemicals that eliminate sewer volumes, the effect of in-sewer aeration of wastewater and other remedial measures need to be properly evaluated. This amendment will provide for funding for the Administrator to work cooperatively with the Los Angeles County sanitation agencies to develop methods to deal with this problem.

### SECTION 41

This section provides that the administrator of the Environmental Protection Agency is authorized to make grants to (1) any person who owns or operates a public water system which, because of groundwater contamination, is unable to supply water which is fit for human consumption to some or all of the users of such system, and (2) any unit of local government on behalf of individuals residing within the boundaries of such unit whose water is supplied from a source other than a public water system and is unfit for human consumption because of groundwater contamination. Such grants shall be for the purpose of providing alternative water supplies to such users and individuals on a temporary basis and providing permanent remedies for water supply problems resulting from groundwater contamination, including but not limited to the drilling of new wells and the installation of new pipes.

An application for a grant under this section shall be in such form and shall contain such information as the Administrator may require. Each such application shall include—

(1) a description of the source and extent of groundwater contamination;

(2) information on the number of people who do not have water available to them because of such contamination; and

(3) a description of the measures the applicant proposes to undertake with the assistance to be provided under this section.

The Federal share of the cost of measures undertaken with assistance under this section shall not exceed 50 percent.

The maximum amount of a grant under this section to any applicant with respect to a particular source of groundwater contamination shall be $2,000,000 for each fiscal year. The maximum amount of grants under this section to applicants within one State shall be $10,000,000 for each fiscal year.

The Administrator shall report annually to Congress on grants made under this section. Each such report shall include—

(1) information on applicants for such grants, including the number of such applicants;

(2) information on the sources and extent of groundwater contamination with respect to which applications are made under this section, including the average number of people affected by each source of groundwater contamination; and

the average amount of such grants and the types of measures undertaken with such grants.

For purposes of this section—

the term "person" includes a State, a political subdivision of a State, and an agency or instrumentality of a State or political subdivision of State;

the term "public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals; and

the term "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Marianas.

There is authorized to be appropriated to carry out this section not to exceed $150,000,000 per fiscal year for each of the fiscal years 1985, 1986, and 1987.

### SECTION 42

This section authorizes the Administrator of the Environmental Protection Agency to make a grant to the city of Des Moines, Iowa, for construction of the Central Sewage Treatment Plant component of the Des Moines, Iowa, metropolitan area project. The Federal share of such project shall be 75 percent of the cost of construction. There is authorized to be appropriated to carry out this section not to exceed $85,000,000 for fiscal years beginning after September 30, 1984, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

### SECTION 43

This section authorizes the Administrator of the Environmental Protection Agency to make a grant to the San Diego Water Reclamation Agency, California, to demonstrate and field test for public use innovative processes which advance the technology of wastewater reclamation and which promote the use of reclaimed wastewater. There is authorized to be appropriated not to exceed $3,000,000 to carry out this section for fiscal years beginning after September 30, 1984.

### SECTION 44

This section amends Section 301(h) of the Federal Water Pollution Control Act. That section allows applications for modification of the requirement for secondary treatment where the discharge is to be made into deep ocean waters or in estuarine areas with strong tidal currents.

Section 301(h)(2) presently provides that the modified requirements shall not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies, assures the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife, and allows recreational activities in and on the water.

Subsection (a) of section 5 amends this provision to require that the discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources, with attainment of the required water quality.

Subsection (b) of section 44 relates to monitoring requirements of section 301(h). Subsection 301(h)(3) requires that the applicant establish a system for monitoring the impact of the discharge on a representative sample of aquatic biota, to the extent practicable. The amendment provides that the scope of the monitoring is to be limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge.

Monitoring programs should include methods that are widely proven and accepted, with demonstrated value in assessing impacts that can be attributed to the permittee's discharge and that relate directly to quantifiable objectives promulgated in advance by the Administrator. Using widely proven, cost-effective techniques will help assure that data collection is not hastily or poorly done and that comparable results can be achieved throughout the nation.

Subsection (c) of section 44 provides that, in the case of any treatment works serving a population of 50,000 or more, where there is any toxic pollutant introduced into the treatment works by an industrial discharger and there is no applicable pretreatment requirement for that pollutant in effect, the applicant must have in effect a pretreatment program of its own, which, in combination with the treatment of discharges at the treatment works, removes the same amount of the toxic pollutant as would be removed if the treatment works were applying secondary treatment and there were no pretreatment program in effect. This is designed to ensure that where less than secondary treatment is permitted by a 301(h) modification, no more toxics will be discharged from the treatment works than from a treatment works supplying full secondary treatment.

Subsection (d) of section 44 provides that any effluent discharged from a treatment works with a 301(h) modification must receive primary treatment by screening, sedimentation and skimming, and treatment for disinfection where necessary. The discharge must also meet the water quality criteria established pursuant to section 304(a)(1) of the Act, after initial mixing in the water surrounding or adjacent to the point at which the effluent is discharged.

Subsection (d) also provides that in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is an applicable pretreatment requirement in effect, the Administrator shall grant to the applicant removal credits to reflect the consistent removal of that pollutant achieved by the treatment works, provided that the following criteria are met. There must exist an effluent limitation on the treatment works for the pollutant and the revised requirement must not result in the effluent violating such effluent limitations. The revised requirement shall not result in interference with the method of disposal or reuse of sludge from the treatment works. The revised requirement will not result in a pollutant interfering with the operation of the treatment works. Also, all other criteria of section 301(h) must be met.

Subsection (e) of section 44 modifies that part of section 301(h) which allows a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement, by deleting the reference to saline estuarine waters where there is strong tidal movement. The effect is to require marine discharges to be made into deep waters of the territorial sea or the waters of the contiguous zone, and not into estuaries.

Subsection (f) of section 5 provides that the amendments made by the section shall not apply to any person whose application for a permit under section 301(h) has been tentatively or finally approved by the Administrator on or before the date of enactment of H.R. 3282.

### SECTION 45

This section is designed to improve the water quality of estuaries.

Subsection (a) of section 45 provides that in any case where the Administrator of the Environmental Protection Agency determines, on his own initiative or upon request of one or more States any portion of which is located within the estuarine zone of an estuary, that the attainment or maintenance of that water quality in an estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities in and on the water, requires the control of point and nonpoint sources of pollution in more than one State, the Administrator is directed to convene a management conference. The members of this conference are to include the Administrator, the Administrator of the National Oceanic and Atmospheric Administration, a representative of each of those States which are located in whole or in part within the estuarine zone of the estuary for which the conference is convened, a representative of each interested Federal agency as determined appropriate by the Administrator, a representative of any interstate agency having jurisdiction over all or a significant part of the estuary, and representatives of any local governments within the estuarine zone as deemed appropriate by the Administrator.

In any case in which an interstate agency has jurisdiction over all or a significant part of the estuary, that agency shall be the lead agency for purposes of carrying out the non-Federal responsibilities of this section over which the agency has jurisdiction. The Administrator is directed to give priority consideration under this section to Long Island Sound; Buzzard's Bay, Massachusetts; and Delaware Bay, Delaware and New Jersey.

In any case in which a boundary between two states passes through an estuary and such boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management conference with respect to that estuary before a final adjudication has been made of the dispute.

Notwithstanding any other provision of the section, the Administrator shall not convene a management conference with respect to an estuary if he determines that there exists a management program for the estuarine zone of such estuary with sufficient authority to achieve the purposes of the section.

Subsection (b) defines the purposes of any management conference convened with respect to an estuary under the section. These purposes are:

Development of a comprehensive master plan for the estuary;

Coordination of the implementation of the master plan by the States participating in the conference;

Recommendation of priority corrective actions and compliance schedules to address point and nonpoint sources of pollution posing the most serious problems; and

Monitoring the estuary to determine the effectiveness of actions taken pursuant to the master plan.

Subsection (c) defines examples of the standards and practices which may be included in the master plan. These are:

Development of water quality standards for waters within the estuarine zone;

Development of toxicity-based standards for toxic pollutants;

Development of water quality-based effluent standards for significant point sources of pollution; and

Development of best management practices to control nonpoint sources of pollution.

In developing a master plan under the section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, or local agencies.

Subsection (d) provides that a management conference convened pursuant to the section shall be convened for at least five years. It may be extended by the Administrator, and, if terminated, may be reconvened by the Administrator as may be necessary to meet the requirements of the section.

Subsection (e) of new section 319 defines the terms "estuary" and "estuarine zone". "Estuary" means all or part of the mouth of a river or stream or other body of water having unimpaired natural connection with open sea and within which the sea water is measurably diluted with fresh water derived from land drainage. "Estuarine zone" means an environmental system consisting of an estuary and those transitional areas which are consistently influenced or affected by water from an esturary, such as salt marshes, coastal and intertidal areas, bays, harbors, lagoons, inshore waters and channels. It also includes those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.

The definition of "estuarine zone" is necessarily broad because pollutants which enter the estuary could conceivably originate from a variety of locations within the entire zone. The Committee intends, however, that the conference address only those portions of the estuarine zone which are identified as being contributors of pollutants to the estuary in amounts significant enough to warrant implementation of control methodologies.

Subsection (f) authorizes the Administrator to make grants to States and interstate agencies participating in a management conference, which has adopted a comprehensive master plan for the estuary which is the subject of the conference. The amount of the grants is 50 percent of a State's or agency's cost of implementing the master plan for each fiscal year. There is authorized to be appropriated to carry out this provision not to exceed $10 million for fiscal year 1984, not to exceed $30 million for fiscal year 1985, not to exceed $50 million for fiscal year 1986, not to exceed $75 million for fiscal year 1987, and not to exceed $75 million for fiscal year 1988..

Subsection (g) authorizes to be appropriated to the Administrator not to exceed $10 million per fiscal year for each of fiscal years 1984 through 1988 for the administration of the section, grants for research, surveys, studies and other technical work, and monitoring the implementation of any comprehensive master plan.

It is the intent of the Committee that the development of any master plan for an estuary pursuant to subsection (c) shall take into consideration a broad range of environmental, social and economic factors. These include, among other things, commercial, navigation, port development and trade needs that might be affected by the plan.

### SECTION 46

Section 46 provides for the cleanup and control of pollution in the Chesapeake and Narragansett Bays.

Subsection (a) directs the Administrator to continue the Chesapeake Bay program and to establish and maintain in the Environmental Protection Agency an office, division or branch of Chesapeake Bay programs to:

Collect and make available information pertaining to the environmental quality of the Chesapeake Bay;

Coordinate Federal and State efforts to improve the water quality of the Bay;

Determine the impact of sediment deposition in the Bay and identify the sources, routes, rates and distribution patterns of such sediment deposition;

Determine the impact of natural and man-induced environmental changes on the living resources of the Bay and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen and toxic pollutants, including organic chemicals and heavy metals, and with special attention given to the impact of such changes on the striped bass.

The Administrator is directed, at the request of a Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay program, to make a grant for the purpose of implementing the management mechanisms contained in the plan if the State has within one year after the date of enactment of this section approved and committed itself to implement all or substantially all aspects of the plan.

Any State, alone or in combination with other States may elect to avail itself of the benefits of this provision by submitting to the Administrator a plan, including the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policy set forth in section 101(a) of the Federal Water Pollution Control Act and will contribute to the achievement of the national goals set forth in that section, he shall approve the proposal and shall finance the costs of implementing segments of such proposal, except that Federal grants under this provisions shall not exceed 50 percent of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan.

Administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against programs or projects supported by funds made available under this paragraph shall not exceed in any one fiscal year ten percent of the annual Federal grant made to a State.

Any State or combination of States that receives a grant shall, within eighteen months after the receipt of the grant, and biennially thereafter, report to the Administrator on the progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay program. The Administrator is to transmit each such report, along with his comments, to the Congress.

Subsection (b) of section 46 provides that the Administrator shall, at the request of the Governor of an affected State, and after consultation with the National Oceanic and Atmospheric Administration, appropriate Federal and State agencies and other interested persons, make a grant for purposes of assessing the principal factors having an adverse affect on the environmental quality of the Narragansett Bay as perceived by both scientists and users.

A State may elect to avail itself of this section by submitting to the Administrator a full and complete description of the program it proposes to establish and administer under State law. The Administrator shall approve each such submitted program within three months of receipt if the applicant demonstrates to the satisfaction of the Administrator that the applicant will:

Establish a committee of representatives from various units of Federal, State and local governments, research and educational institutions, and concerned groups and individuals on the Bay to provide advice on the design and implementation of a management program and to coordinate communication on issues affecting the Bay's water quality;

Review and coordinate Federal and State water pollution abatement efforts that will most efficiently address those principal factors having an adverse effect on the Bay's water quality;

Undertake, subsequent to an analysis of all environmental sampling data presently being collected on the Narragansett Bay, methods for improving such data collection, particularly with respect to toxic pollutants; establish a continuing capacity for collecting, storing, analyzing and disseminating such data; institute a sampling program where deficiencies are found to exist in present sampling programs; and develop and implement management practices and measures, including land use requirements, to reduce to the greatest extent feasible pollutant loadings in the Bay and to improve the Bay's water quality.

Any State that avails itself of the benefits of this subsection is required not later than two years after receipt of a Federal grant, and annually thereafter, to report to the Administrator on progress made in implementing a management program to improve the water quality of Narragansett Bay. The Federal grants under this section are not to exceed 50 percent of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan.

Subsection (c) authorizes to be appropriated the following sums to carry out the purposes of this section:

$3 million per fiscal year for each of fiscal years 1985 through 1988 to carry out the Chesapeake Bay program by the Administrator of the Environmental Protection Agency;

$10 million per fiscal year for each of fiscal years 1985 through 1988 for grants to the States to implement the Chesapeake Bay program;

$1,500,000 per fiscal year for each of fiscal years 1985 through 1988 to carry out the Narragansett Bay program.

### SECTION 47

This section provides for studies and investigation and cleanup of the New York and New Jersey Harbor area.

It directs the Administrator to collect and make available information pertaining to the environmental quality of the New York and New Jersey Harbor area, to coordinate Federal and State efforts to improve the water quality of the harbor, and to determine the impact of natural and man-induced environmental changes on the living resources of the harbor and on adjacent coastal areas and the relationships among such changes, with particular emphasis placed on the impact of pollutant loadings of sewage, dissolved oxygen and toxic pollutants, including organic chemicals and heavy metals.

The Administrator is directed, at the request of a Governor of a State affected by any interstate management plan developed pursuant to section 45 of H.R. 3282 (the estuarine studies program), to make a grant for the purpose of implementing the management mechanisms contained in the plan, in accordance with that section.

An affected State or combination of States may, in addition, in the absence of a plan developed pursuant to section 45, submit to the Administrator a plan, including the estimated costs of the actions proposed to be taken during the next fiscal year, to control water pollution problems. If the Administrator finds that such a proposal is consistent with the national policies set forth in the Act, he shall approve such proposal and shall finance the costs of implementing segments of such proposal, except that Federal grants under this paragraph shall not exceed 50 percent of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan.

Any State or combination of States that receives a grant under Section 45 or subparagraph (B) of paragraph (2) of this section shall, within 18 months after the date of receipt of the grant, and biennially thereafter, report to the Administrator on the progress made in implementing the developed plan. The Administrator is to transmit each such report, along with the Administrator's comments, to Congress.

Subsection (b) of section 47 authorizes to be appropriated $10 million per fiscal year for each of fiscal years 1985 through 1988 for the New York and New Jersey Harbor area provision.

### SECTION 48

Section 48 provides for a Great Lakes consumptive uses study.

Subsection (a) of section 48 authorizes the Administrator, in cooperation with other interested departments, agencies, and instrumentalities of the United States and the eight Great Lakes States and their political subdivisions, to conduct a study of control measures which can be implemented to reduce the quantity of Great Lakes water consumed without adversely affecting projected economic growth of the Great Lakes region.

Subsection (b) provides that the study shall include an analysis of both existing and new technology which is likely to be feasible in the foreseeable future and must, as a minimum, include the following:

A review of the methodology used to forecast Great Lakes consumptive uses;

An analysis of the effect that enforcement of other sections of this Act relating to thermal discharges has had on consumption of Great Lakes water;

An analysis of the effects of laws, regulations and national policy objectives on consumptive uses of Great Lakes water used in manufacturing;

An analysis of the economic effects on a consuming industry and other Great Lakes interests associated with a particular consumptive use control strategy;

An analysis of associated environmental impacts, both singularly and in combination with other consumptive use control strategies;

A summary discussion containing recommendations for methods of controlling consumptive uses which methods maximize benefits to the Great Lakes ecosystem and also provide for continued full economic growth for consuming industries as well as other industries which depend on the use of Great Lakes water.

Subsection (c) authorizes to be appropriated, for fiscal years beginning after fiscal year 1984, $4,500,000 to carry out this provision.

Subsection (d) for purposes of this section defines the term Great Lakes States as meaning Minnesota, Wisconsin, Illinois, Ohio, Michigan, Indiana, Pennsylvania and New York.

### SECTION 49

This section amends section 301(j)(1)(A) of the Federal Water Pollution Control Act. That section requires that an application for a modification for less than secondary treatment under section 301(h) where an ocean discharge is involved, shall be filed not later than one year after the date of the 1981 amendments to the Act. Section 49 grants an exception to this time limitation, providing that a publicly owned treatment works which, before December 1, 1982, had a contractual arrangement to use a portion of the capacity of the ocean outfall operated by another publicly owned treatment works which has applied for or receives a 301(h) modification, may apply for a modification of subsection (h) in its own right, not later than 30 days after the date of enactment of the Water Quality Renewal Act of 1984. This is intended to accomplish a narrow, specific purpose: to provide an opportunity for the Irvine Ranch Water District, a California public agency, to apply for a waiver under section 301(h). This district, which currently has a contract to discharge through the Orange County Sanitation District outfall, had been operating on the assumption that its discharge was accommodated in the application for a modification by the Orange County Sanitation district and thus the district did not apply during the period allowed by the 1981 amendments.

All that is provided to the district is the opportunity to apply for the waiver. Prior to its discharge into the ocean, either through its own outfall or through Orange County Sanitation district's outfall, the District must comply with the provisions of section 301(h). The amendment limits the opportunity for application to 30 days after enactment. The Environmental Protection Agency, however, should provide the District with the time necessary to demonstrate compliance with the requirements of section 301(h) so long as the application is promptly submitted within the time required and the District demonstrates due diligence in meeting the requirements for a waiver.

### SECTION 50

The purpose of this section is to achieve the goals embodied in the Great Lakes Water Quality Agreement of 1978 through improved organization and definition of mission on the part of the Environmental Protection Agency, funding of State grants for pollution control in the Great Lakes area, and improved accountability for implementation of the agreement.

The Great Lakes National Program Office of the Agency is designated as the Great Lakes International Coordinating Office. The head of the Office shall also serve as principle liaison person on Great Lakes matters to the International Joint Commission, United States and Canada.

The Coordination Office shall develop and implement specific plans to carry out the responsibility of the United States under the Great Lakes Water Quality Agreement of 1978; coordinate actions of the Agency aimed at improving Great Lakes water quality; coordinate actions of the Agency and State and local authorities, so as to insure the input of those agencies and authorities in developing water quality strategies and obtain the support of those agencies and authorities in achieving the objectives of such agreement; establish a Great Lakes systemwide surveillance network to monitor the water quality of the Great Lakes, with specific emphasis on the monitoring of toxic pollutants; and serve as the liaison with, and provide information to, the Canadian members of the Commission and the Canadian counterpart to the Agency.

The Administrator shall ensure that the office enters into agreements with the various organizational elements of the agency involved in Great Lakes activities in the appropriate State agencies specifically delineating the duties and responsibilities of each such element with respect to the Great Lakes; the timeframes for carrying out such duties and responsibilities, and the resources to be committed to such duties and responsibilities.

There are authorized to be appropriated for the purposes of carrying out this section $8,000,000 for fiscal year 1986, $9,000,000 for fiscal year 1987, $10,000,000 for fiscal year 1988, $11,000,000 for fiscal year 1989, and $12,000,000 for fiscal year 1990.

For the purposes of carrying out section 104(f) of the Federal Water Pollution Control Act (water quality studies of the Great Lakes) there is authorized to be appropriated $10,000,000 for fiscal year 1985. Such funds shall be in addition to and not in lieu of any funds authorized to be appropriated under Section 104(u) of the Act.

Within 120 days after the date of enactment of H.R. 3282, and at the beginning of each fiscal year thereafter, the Administrator shall submit to Congress a comprehensive assessment of the planned efforts to be pursued in the succeeding fiscal year for implementing the Great Lakes Water Quality Agreement of 1978. The assessment shall show by categories (including judicial enforcement, research, State cooperating efforts, and general administration) the amounts anticipated to be expended on Great Lakes water quality initiatives in the fiscal year to which the assessment relates. The assessment shall also include a report of current programs administered by other Federal agencies which make available resources to Great Lakes water quality efforts.

Within 150 days after the end of each fiscal year, the Administrator shall submit to Congress a comprehensive report which describes the achievements in the preceding fiscal year in implementing the agreement; describes the progress made in such preceding fiscal year in implementing the system of surveillance of the water quality of the Great Lakes, with particular reference to toxic pollutants; and describes the long-term prospects for improving the water quality of the Great Lakes.

### SECTION 51

This section provides that the Administrator shall conduct research on the harmful effects on the health and welfare of persons caused by pollutants in water. The research is to be done in conjuction with other Federal, State, and interstate agencies carrying on such research, including the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration.

Special emphasis is to be placed on the effect that bioaccumulation of these pollutants in aquatic species has upon reducing the value of aquatic commercial and sport industries. The research is to also further study methods to reduce and remove these pollutants from the relevant affected aquatic species so as to restore and enhance these valuable resources.

Subsection (b) provides an authorization for appropriations not to exceed $2.5 million per fiscal year for fiscal years 1985 through 1988 for carrying out the provisions of this section.

Section 51 of H.R. 3282 provides specific direction for certain types of critical research to be performed and authorizes appropriations to carry out this work. Emphasis is to be placed on bioaccumulation and its effect on commercial and sport aquatic species, and on investigating methods to reduce and remove pollutants from these species.

### SECTION 52

This section authorizes the Administrator of the Environmental Protection Agency, in conjunction with the United States Fish and Wildlife Service, to carry out a demonstration program to restore the biological integrity of acidified lakes and watersheds through liming. The Administrator shall select sites to carry out such program which will enable the Administrator to demonstrate and determine the effectiveness of liming in reducing the acidity of lakes and watersheds and in restoring the biological integrity of acidified lakes and watersheds.

The Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate reports on the results of the demonstration program carried out under this section not later than 90 days after completion of the demonstration program and not later than three and six years after completion of the program. Such reports shall include, but not be limited to, an analysis of the effectiveness of liming in reducing the acidity of lakes and watersheds and in restoring the biological integrity of acidified lakes and watersheds in the long-term and the short-term.

There is authorized to be appropriated to carry out this section not to exceed $25,000,000 for fiscal years beginning after September 30, 1984, to remain available until expended.

### SECTION 53

This section authorizes the Administrator of the Environmental Protection Agency to make a grant to construct necessary treatment works for providing secondary treatment for the metropolitan Seattle, Washington area. The Federal share of such project shall be 75 percent of the cost of construction thereof. There is authorized to be appropriated $250,000,000 to carry out this section for fiscal years beginning after September 30, 1984, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

### SECTION 54

This section provides that, upon application of a State for which a report submitted under subsection (a) of section 319 of the Federal Water Pollution Control Act, as added by section 8 of this Act, and a plan submitted under subsection (b) of such section is approved under such section, the Administrator of the Environmental Protection Agency shall make grants under this section to the State for the purpose of assisting the State in carrying out groundwater water quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.

An application for a grant under this section shall be in such form and shall contain such information as the Administrator of the Environmental Protection Agency may require.

The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this section shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this section in any fiscal year shall not exceed $150,000.

The Administrator of the Environmental Protection Agency shall include in each report transmitted under subsection (k) of section 319 of the Federal Water Pollution Control Act, as added by section 8 of this Act, a report on the activities and programs implemented under this section during the preceding fiscal year.

There is authorized to be appropriated to carry out this section not to exceed $7,500,000 per fiscal year for the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989.

### SECTION 55

This section directs the Administrator of the Environmental Protection Agency, in consultation with the State of Alaska, to conduct and prepare a study-report which shall determine the feasibility of resolving the air pollution control, solid waste disposal, water quality standards compliance, and energy impacts associated with the achievement of best practicable technology under section 301 of the Federal Water Pollution Control Act with respect to—

(1) the Alaska Lumber and Pulp Company, located at Sitka, Alaska (NPDES permit number AK000053-1); and

(2) the Louisiana-Pacific Corporation, located at Ketchikan, Alaska (NPDES) permit numbered AK000092-2).

The Administrator shall submit such study-report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than three months after the date of enactment of this Act.

### SECTION 56

This section establishes a commission to be known as the National Ground Water Commission.

The duties of the Commission are to:

Assess generally the amount, location, and quality of the Nation's ground water resources;

Identify generally the sources, extent, and types of ground water contamination;

Assess the scope and nature of the relationship between ground water contamination and ground water withdrawal and develop projections of available, usable ground water in future years on a nationwide basis;

Assess the relationship between surface water pollution and ground water pollution;

Assess the need for a policy to protect ground water from degradation caused by contamination;

Assess generally the extent of overdrafting of ground water resources, and the adequacy of existing mechanisms for preventing such overdrafting;

Assess generally the engineering and technological capability to recharge aquifers;

Assess the adequacy of the present understanding of ground water recharge zones and sole source aquifers and assess the adequacy of knowledge regarding the interrelationship of designated aquifers and recharge zones;

Assess the role of land-use patterns as these relate to protecting ground water from contamination;

Assess methods for remedial abatement of ground water contamination as well as the costs and benefits of cleaning up polluted ground water and compare cleanup costs to the costs of substitute water supply methods.

Investigate policies and actions taken by foreign governments to protect ground water from contamination;

Assess the use and effectiveness of existing interstate compacts to address ground water protection from contamination;

Analyze existing legal rights and remedies regarding contamination of ground water;

Assess the adequacy of existing standards for ground water quality under State and Federal law;

Assess monitoring methodologies of the States and the Federal Government to achieve the level of protection of the resource as required by State and Federal law;

Assess the relationship between ground water flow systems (and associated recharge areas) and the control of sources of contamination;

Assess the role of underground injection practices as a means of disposing of waste fluids while protecting ground water from contamination;

Assess methods for abatement and containment of ground water contamination and for aquifer restoration including the costs and benefits of alternatives to abatement and containment.

Assess State and Federal ground water law and mechanisms with which to manage the quality and quantity of the ground water resource;

Assess the adequacy of existing ground water research and determine future ground water research needs; and

Assess the roles of State, local, and Federal Governments in managing ground water quality and quantity.

(1) The Commission is composed of nineteen members as follows:

Six appointed by the Speaker of the United States House of Represenatives from among the Members of the House of Representatives, two of whom shall be members of the Committee on Energy and Commerce, two of whom shall be members of the Committee on Public Works and Transportation, and two of whom shall be members of the Committee on Interior and Insular Affairs;

Four appointed by the majority leader of the United States Senate from among the Members of the United States Senate;

Eight appointed by the President as follows:

Four from among a list of nominations submitted to the President by the National Governors Association, two of whom shall be representatives of ground water appropriation States and two of whom shall be representatives of ground water riparian States;

One from among a list of nominations submitted to the President by the National League of Cities and the United States Conference of Mayors;

One from among a list of nominations submitted to the President by the National Academy of Sciences;

One from among a list of nominations submitted to the President by groups, organizations, or associations of industries the activities of which may affect ground water; and

One from among a list of nominations submitted to the President from groups, organizations, or associations of citizens which are representative of persons concerned with pollution and environmental issues and which have participated, at the State or Federal level, in studies, administrative proceedings, or litigation (or any combination thereof) relating to ground water.

The Director of the Ofice of Technology Assessment.

The Chairman of the Commission shall be appointed by the Speaker of the House of Representatives from among members appointed under paragraph (1)(A) of this subsection and the Vice Chairman of the Commission shall be appointed by the majority leader of the Senate from among members appointed under paragraph (1)(B) of this subsection. The Chairman and the Vice Chairman of the Commission shall serve for the life of the Commission unless they cease to be members of the Commission before the termination of the Commission.

The Commission shall request, and the Chief of Engineers and the Director of the Geological Survey are each authorized to detail, on a reimbursable basis, any of the personnel of their respective agencies to the Commission to assist it in carrying out its duties under this section. Upon request of the Commission, the head of any other Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under this section.

The Commission shall transmit to the President and to each House of the Congress a report not later than October 30, 1986. The report shall contain a detailed statement of the findings and conclusions of the Commission with respect to each item listed in subsection (b), together with its recommendations for such legislation and administrative actions, as it considers appropriate.

Not later than one year after the date of enactment of this Act, the Commission shall complete a preliminary study concerning ground water contamination from hazardous and other solid waste and submit to the President and to the Congress a report containing the findings and conclusions of such preliminary study. The study shall be continued thereafter, and final findings and conclusions shall be incorporated as a separate chapter in the report required under paragraph (1). The preliminary study shall include an analysis of the extent of ground water contamination caused by hazardous and other solid waste, the regions and major water supplies most significantly affected by such contamination, and any recommendations of the Commission for preventive or remedial measures to protect human health and the environment from the effects of such contamination.

(g) The Commission shall cease to exist on January 1, 1987.

(h) There is authorized to be appropriated for the fiscal years 1985 through 1987 not to exceed $7,000,000 to carry out this section.

### SECTION 57

This section provides that no payments may be made under this Act except to the extent provided in advance in appropriation Acts.

The substitute is the same as the bill reported by the committee with the following exceptions:

The provision adding collector sewers as eligible categories for grant assistance has been deleted (section 11).

A technical amendment to section 16(g)(4) is added to make sure that grant monies for Elk Pinch, West Virginia, will be available if the plant is completed prior to enactment of this bill into law.

New section 16(g)(6) is added providing a grant of $27 million out of funds allotted to the State of California to the city of Watsonville for the construction of sewage treatment facilities.

In section 19 a revised version of the coal remining provisions has been included to address concerns raised by environmental organizations. This amendment, among other things, makes it clear that best available technology using best professional judgment must be applied in the case of remining.

The provision in section 21 with regard to integrated facilities contains a new provision that an integrated facility may apply and the administrator may establish a single compliance date for all applicable pretreatment standards only if it will result in compliance with all such standards at an earlier date than would otherwise be the case and if the applicant demonstrates to the satisfaction of the administrator that the extension of the first applicable compliance date is necessary because of technical reasons.

Subsection (b) of section 21 limits the extension of the compliance date for the electroplating category to December 31, 1984 and eliminates the provision for application for an extension of that date. Both this provision and the previous provisions were worked out to meet the concerns or environmental organizations.

In section 25 the amendment modifies the provision permitting discharge permits of up to 10 years by requiring that such permits must be modified promptly not only to ensure compliance with any new or revised effluent limitations for toxics but also any new or revised requirements pursuant to a water quality standard established under the act.

The provision in section 25(b) relating to exemption of conveyances of storm water around facilities from the requirement for a permit under the act is modified in two respects. The reference to pollutants in reportable quantities as determined by the administrator is deleted so that the exemption only applies where there are no pollutants in the diverted flows and the person discharging storm water runoff must conduct monitoring activities and report the results to the administrator.

Section 29 which provides for grant assistance to treat Mexican sewage flowing into the community of Naco, Arizona, has been revised to make the county of Cochise rather than Naco the grantee and to also provide that treatment may be provided for the community of Naco's sewage in accordance with all of the provision of the Water Pollution Control Act.

Section 41 adds a new provision providing 50 percent Federal grant assistance for the purpose of providing temporary alternative water supplies and remedies for water supply problems resulting from groundwater contamination.

Section 42 authorizes a 75-percent grant of $85 million to the city of Des Moines, Iowa, to assist in the construction of sewage treatment facilities.

Section 43 adds a provision authorizing EPA to make a grant of $3 million to San Diego, California, to demonstrate and field test innovative processes which promote the use of reclaimed wastewater.

Section 44 adds to the bill amendments to section 301(h) of the Federal Water Pollution Control Act relating to marine discharges which were originally included in the introduced bill. Briefly the amendments to section 301(h), which provides a mechanism for less than secondary treatment where ocean discharges are involved, make the provisions more strict by requiring at least primary treatment, requiring pretreatment of industrial discharges and prohibiting discharges into estuaries.

Section 45 adds a provision providing for the convening of an interstate conference on water quality problems in estuaries in order to develop plans to be implemented by the States in the estuarine zone to improve the water quality of the estuary.

This is the same as the version included in the introduced bill except for the following four significant changes: the conferences are to be convened at the request of either a State or E.P.A.; the National Oceanic and Atmospheric Administration has been included; no management conference is convened if an adequate management program already exists; and the definition of estuarine zone is modified to include tributaries to the historic height of migration of anadromous fish.

The provision in section 46 for the study and clean up of Narragansett Bay, Mass., has been modified to include the National Oceanic and Atmospheric Administration as a participant.

Section 48 authorized a study of consumptive uses of water in the Great Lakes.

Section 49 provides a 30-day extension for Orange County, CA to apply for a modification for an ocean discharge under section 301(h) of the act.

Section 50 establishes a Great Lakes international coordination office within E.P.A. to assist in the achievement of the goals embodied in the Great Lakes water quality agreement of 1978.

Section 51 directs the E.P.A. in conjunction with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration to conduct research on the harmful effects of pollutants in water on the health and welfare of persons, with special emphasis on bioaccumulation of pollutants in aquatic species.

Section 52 directs E.P.A. in conjunction with the U.S. Fish and Wildlife Service to carry out a demonstration program to restore the biological integrity of acidified lakes through liming.

Section 53 authorizes a grant of $250 million to Seattle, WA, to pay 75 percent of the cost of treatment works to provide secondary treatment.

Section 54 provides a 50 percent grant program to States to assist the States in carrying out groundwater quality protection activities.

Section 55 directs E.P.A. in consultation with the State of Alaska to prepare a report on the feasibility of resolving various pollution problems associated with two pulp mills in Alaska and to report back to Congress within 3 months. This provision replaces an earlier provision which would have granted a 10-year extension of existing permits.

Section 56 establishes a National Groundwater Commission to study and report to Congress on problems associated with the Nation's groundwater resources and the feasibility of various methods to correct these problems.

Section 57 is technical in nature and adds a provision that no payments may be made pursuant to this act except to the extent provided in advance by appropriation acts.

Finally, Mr. Chairman, the Committee on Merchant Marine and Fisheries has worked with our committee on certain provisions of H.R. 3282. Of interest to the Merchant Marine Committee. They have also raised an issue that I would like to clarify for the record; that is, on the role of State coastal zone management programs in implementing the comprehensive plans developed pursuant to section 45 of the committee substitute.

The Committee on Merchant Marine and Fisheries has brought to our attention that many of the States bordering estuaries that are likely to be the subject of management conferences have federally approved coastal zone management programs. These programs provide for comprehensive, balanced planning for the State's coastal zone and will serve as an entirely appropriate apparatus to implement the estuarine plans developed under section 45. I would, therefore, like to note for the record the understanding between our committee and the Committee on Merchant Marine and Fisheries that any State seeking implementation funds under subsection (f) will, as part of that implementation, incorporate the recommendations and policies of the estuarine plan into their approved coastal zone programs. The purpose of this would be to use the existing State apparatus when implementing these plans so as to avoid needless programmatic redundancies.

Mr. ANDERSON. Mr. Chairman, will the gentleman yield?

Mr. ROE. I yield to the gentleman from California.

(Mr. ANDERSON asked and was given permission to revise and extend his remarks.)

Mr. ANDERSON. Mr. Chairman, I rise in support of H.R. 3282, the Water Quality Renewal Act of 1984.

At the outset, I want to congratulate our chairman of the Subcommittee on Water Resources, Bob Roe, and the subcommittee's ranking minority member, Arlan Stangeland, on a tremendous job in crafting this important measure. I would also, of course, like to commend Jim Howard, chairman of the full Public Works and Transportation Committee, and Gene Snyder, our ranking minority member, on their efforts. Also, majority and minority staffs should be recognized for their great work and dedication.

As you know, this measure will reauthorize the landmark Clean Water Act of 1972 through fiscal year 1988. As an original coauthor of the 1972 act, I have closely monitored its progress over these past 12 years and most will agree that it certainly has helped improve the quality of our Nation's water. Today we can look with pride at most of our rivers, lakes, and streams and know that our efforts in 1972 were not futile.

This is not to say, however, that the problem of dirty water is a thing of the past. We must continue to have a strong water pollution control program at the Federal level in order to finish the job and meet the needs of tomorrow. This is where H.R. 3282, and the perfecting amendment in the nature of a substitute, comes into play.

Throughout this past week, many of our colleagues have addressed this Chamber to highlight the major points of H.R. 3282. I will not take the House's valuable time to again discuss the major features of this legislation. Instead, I would like to take just a moment and look at H.R. 3282 in a more personal way. Specifically, how it will affect my area in southern California.

First, the EPA Administrator is directed to conduct a study, in consultation with the city and county of Los Angeles, on the problem of the corrosive effects of sulfides in collection and treatment systems.

Unlike much of the rest of the country, southern California has separate storm drains and sanitary sewers. While this eliminates the major environmental problems caused by combined sewer overflows which plagues many communities, it does result in a unique problem caused by the stronger sewage flowing through separate sewers, that is the generation of sulfides and the subsequent deterioration of the sewers and treatment works that they cause. These works were constructed at enormous expense of Federal, State, and local dollars and because they were properly constructed they should last a long time. However, the strong sewage and warm temperatures in southern California enhance sulfide generation.

The existence of sulfides in large concrete sewers throughout the Los Angeles basin results in the formation of sulfuric acid which corrodes the sewers and creates the potential for sewer collapse. If one of the large sewers, some of which are as large as seven feet in diameter, were to collapse in metropolitan Los Angeles, the resulting environmental and public health problems that would occur would be devastating. Further, sulfides are causing corrosion within the treatment works as the sewage enters the POTW.

One of the most effective controls of sulfide generation in sewers is the existence of heavy metals such as iron, zinc, or nickel in the sewage. These heavy metals combine with the sulfide as soon as they are generated, thus preventing the sulfides from corroding the sewers. With the advent of more stringent controls on the discharge of heavy metals into the sewers from industry, there is less metal in the sewer to inactivate the sulfide. The imminent implementation of categorical pretreatment standards on electroplaters and metal finishers will have an enormously profound negative effect on the sulfide problem as more and more metals are removed from the sewers.

As I have said earlier, this provision will provide funding for the EPA Administrator to work cooperatively with the Los Angeles sanitation agencies to develop methods to deal with the problem, including potential modification to the categorical problem.

Another important provision of this measure pertains to the city of Avalon's sewage treatment system. Avalon is located on Santa Catalina Island, 26 miles off the coast of southern California. It is a resort community, whose population swells during the summer months. Prior to 1978, Avalon dumped its raw sewage into the ocean with little, if any negative environmental impact. Pursuant to the 1972 law, however, the city, in 1978, began operation of a secondary treatment plant.

The sewage treatment plant was designed for an average daily flow of 500,000 gallons and a peak flow of 1 million gallons per day. The average daily flow during the peak of the summer season is 800,000 gallons per day—peak flows have been as high as 1,600,000 gallons.

Subsection (g) of section 16 directs the EPA Administrator to make a grant, from the funds allotted to the State of California under section 205 of the act, to the city of Avalon to upgrade and improve its treatment plant. This work is estimated to cost approximately $2.5 million.

In conclusion, Mr. Chairman, I would again like to express my strong support for this important legislation and urge all of my colleagues to support it as well. When it comes to cleaning up our environment, we must now finish the work we started in the 1970's and renew our commitment to a clean and healthy world.

□ 1500

Mr. SNYDER. Mr. Chairman, will the gentleman yield?

Mr. ROE. I yield to the gentleman from Kentucky.

(Mr. SNYDER asked and was given permission to revise and extend his remarks.)

Mr. SNYDER. I thank the gentleman for yielding.

Mr. Chairman, I, too, want to join with those who are giving commendations to the gentleman in the well, the chairman of the subcommittee, and to the gentleman from Minnesota, and, of course, to the chairman of the full committee.

Mr. Chairman, I rise in support of the Roe amendment in the nature of a substitute to H.R. 3282, the Water Quality Renewal Act of 1984.

H.R. 3282 is the product of more than 2 years of hearings and deliberations by our Subcommittee on Water Resources, a process spanning portions of both the 97th and 98th Congresses. During this period, testimony from hundreds of witnesses was received, reviewed, and analyzed. Consideration was given to recommendations and suggestions from virtually every segment of our population—politically, philosophically, and geographically. The result of this thorough and painstaking process is a bill which attempts to strike the proper balance between adequately protecting the quality of our Nation's waters and being realistic in the goals and requirements we establish for this most important environmental program.

Special recognition should be made of the chairman of our Committee on Public Works and Transportation, the gentleman from New Jersey [Mr. Howard], who is the original author of H.R. 3282 and whose leadership in support of a strong and environmentally protective bill has been second to none. I would also like to compliment the chairman of the Subcommittee on Water Resources, our committee chairman's colleague from New Jersey [Mr. Roe], and his ranking Republican counterpart, the gentleman from Minnesota [Mr. Stangeland], both of whom have made significant contributions to the formulation of this legislation and to fashioning the compromise bill that we are considering today.

Mr. Chairman, in the 12 years since passage of the Federal Water Pollution Control Act Amendments of 1972, we have made great strides in the campaign to preserve and enhance the quality of our Nation's precious water resources. Industrial dischargers have installed billions of dollars of water pollution control equipment, and municipalities have constructed wastewater treatment facilities throughout the Nation in an effort to achieve the act's goal of fishable-swimmable waters.

More, of course, remains to be done. The Environmental Protection Agency has identified almost $120 billion in unmet municipal wastewater treatment facility needs throughout the country. Industrial dischargers are in the process of designing and constructing the next generation of pollution control equipment—best conventional technology and best available technology economically achievable—in order to further reduce the point source discharge of pollutants into our lakes, streams, and rivers.

The Roe substitute, which the committee brings to the floor today continues and builds upon the momentum that our national water quality program has developed. The substitute reauthorizes appropriations for the construction grants program at levels above the annual $2.4 billion figure currently established in law. It also authorizes a new 4-year $1.6 billion per year program of grants to the States for use in establishing revolving funds to finance construction of priority wastewater treatment facilities. Together, these two authorities are intended to restore the Nation's investment in constructing municipal sewage treatment plants to pre-1981 levels, while at the same time providing additional flexibility to the States in their efforts to focus financial resources on addressing priority water pollution control needs.

Like the bill reported by our Committee on Public Works and Transportation, the Roe substitute makes a number of other very significant changes and additions to our body of Federal water pollution control law. The substitute establishes a major new authority in the Federal Water Pollution Control Act designed to address nonpoint source pollution, a problem which experts have estimated is responsible for more than half of the pollutant loading into our Nation's waters and a problem which has received far too little attention until now. The Roe substitute provides two new enforcement mechanisms to the arsenal of compliance oriented behavior-modifying tools at the disposal of EPA: new administrative penalties and strengthened criminal penalties. It authorizes the appropriation of additional funds to clean up an increasingly important and, up until now, much neglected water pollution problem: Deteriorating quality in many of our Nation's lakes. The substitute also makes a number of revisions to the Clean Water Act's industrial compliance deadlines, revisions necessitated by originally unforseen technical and administrative problems experienced by EPA in promulgating necessary effluent guideline regulations, and it amends the act's provisions relating to national pollutant discharge elimination system permits to improve the functioning and effectiveness of the NPDES permit program. The gentleman from New Jersey's substitute, like our reported bill, also addresses a number of pressing site-specific water pollution problems. One of these, the international pollution problem being experienced in the vicinity of San Diego, CA—a matter that has been characterized by many as the most serious environmental problem in California—has been addressed in no small measure due to the excellent leadership and efforts of our committee colleague from that area, the gentleman from California [Mr. PACKARD]. Two others—relating to grants for Taylor Mill, KY, and requirements applying to the Okolona sewer construction district in Jefferson County, KY—are particularly important to me and to my constituents.

Mr. Chairman, in addition to the provisions I have just discussed and others which are identical to language appearing in the committee-reported bill, the Roe substitute contains three other types of provisions.

The substitute includes a number of provisions which were included in the version of H.R. 3282 originally reported by our Public Works Committee but which were subsequently deleted because of questions that were raised about the possible jurisdictional reach of those provisions. These include amendments to the ocean discharge waiver provisions of the Clean Water Act, authorization of new programs to maintain water quality in estuaries and to address water pollution control needs in certain bays, direction to the Administrator to conduct research on the harmful effects of water pollution, authorization for the establishment of a new Great Lakes international coordination office, and direction to the Administrator to carry out a clean lakes liming demonstration project. I might point out that, in connection with the estuary management conference language in the substitute, the gentleman from Oregon [Mr. ROBERT SMITH], has worked successfully with the environmental community and others interested in this provision to fashion a new definition of estuarine zone and additional language necessary to prevent duplicative efforts. This language has been included in the substitute, and the gentleman is to be complimented for his efforts. I would also like to point out that, in taking the action which we did to delete these provisions from the originally reported bill, the committee in no way intended to concede the correctness of jurisdictional claims made by others with respect to any of the provisions and, in fact, we disagree with those claims.

Second, the Roe substitute includes language reflecting a compromise reached with a number of Members who expressed misgivings about certain of H.R. 3282's committee-reported provisions. Included in this category is new language relating to the authority of the Administrator to issue NPDES permits for up to 10 years, compliance deadlines for the electroplating categorical pretreatment standard regulations, collector sewer grant eligibility, and permit requirements pertaining to coal remining operations, stormwater runoff diversion facilities, and Alaskan pulp mills. The effect of this new language is to make the bill even more environmentally responsible and protective than the strong bill which was reported by the committee, and I am most pleased that agreement was able to be reached leading to the strong general support for the substitute which now exists.

Finally, the substitute contains a number of new provisions suggested by various Members to improve the legislation and our Nation's water pollution control program. Among those is a provision authorizing new grant assistance to provide alternative water supplies in instances of contaminated groundwater. The gentlelady from Connecticut [Mrs. JOHNSON] is the original author of this language and I believe she deserves great credit for recognizing the need to address this important water pollution problem and for developing the approach which is now included in the substitute. Also included in the substitute are provisions establishing a National Groundwater Commission—a proposal originated by the gentleman from Pennsylvania [Mr. EDGAR] which has twice before been approved by the full House of Representatives—and authorizing the Administrator to provide grant assistance to the States for implementation of necessary groundwater protection activities.

Mr. Chairman, the bill before us is not perfect but it is a substantial and, I believe, generally successful effort to advance our Nation's water pollution control program. There is still additional work that needs to be done to perfect this legislation before it goes to the President for his signature. At least four areas that I believe may need further refinement relate to compliance deadlines for best conventional technology, clarification of liability standards in the bill's new criminal penalty section, more realistic deadlines and revised orientation of the new post-BAT language in section 5, and the need to make some of the authorization levels in the bill track more closely with levels of funding likely to actually receive appropriations in the next few years. I am hopeful that we will be able to pursue these matter further in the weeks to come when the bill is in conference.

In sum, Mr. Chairman, the legislation before us is a balanced approach to strengthening our Nation's clean water laws. It is a good bill, one that is a true credit to all those who worked on it and who care strongly about preserving and maintaining the quality of our waters. It deserves an overwhelming vote of approval here today and I urge my colleagues to join me in supporting it.

Mr. ROE. Mr. Chairman, I yield back the balance of my time.

Mr. STANGELAND. Mr. Chairman, I am pleased to rise in strong support of the amendment in the nature of a substitute to H.R. 3282, offered by the gentleman from New Jersey [Mr. ROE].

The substitute is a compromise that has bipartisan support from the Committee on Public Works and Transportation and throughout the Congress. It is supported by numerous environmental, industry, labor, State, and local organizations. Credit for reaching this compromise must be shared by many people. I truly believe the outstanding leadership of the chairman of the full committee [Mr. HOWARD] and the Subcommittee on Water Resources [Mr. ROE], as well as the ranking member of the committee, the gentleman from Kentucky [Mr. SNYDER], is the primary reason this agreement has been made possible.

The bill, as it was reported from the committee, contained provisions that concerned various groups. The committee sought, and obtained, an open rule, so that all members would have the opportunity to offer amendments they believed to be needed. The leadership of the committee went far beyond that, however. Numerous meetings between the members and environmental, industry, and other groups were held during the last few weeks. Late last Wednesday, agreement was reached on key provisions. They may not satisfy everyone totally, but that is the essence of compromise. In my opinion, the provisions that are changed are modified reasonably and toward the end of improving water quality and management of clean water programs. There are many provisions that are not changed, and this is also the best result. No legislation can contain everything it might, and the same is true of the substitute for H.R. 3282.

As I discussed in the general debate for H.R. 3282, I firmly believe that a local pretreatment option is well justified. Such locally controlled programs would do a better job by managing issues nearer to the problem. I had considered offering an amendment for a nationwide program or a demonstration pretreatment program. Either would apply only to those communities with the financial and technical capability to undertake such a pretreatment program. It would also have numerous environmental safeguards. The rest of the communities would operate under the National Categorical Program, which is proceeding despite some difficulties. I have agreed to not offer the local option amendment in order to ensure rapid consideration of H.R. 3282. I do retain my belief in the local option approach and am hopeful that it will be favorably considered in the future.

Mr. Chairman, the agreement reached last week is that environmental groups, like others, will support H.R. 3282 and work for its enactment. No amendments will be pursued on issues even if groups did not get exactly what they wanted. What must be stressed is that the substitute offered here today is fundamentally the same as that voted out of the Committee on Public Works and Transportation on May 10. That version of the legislation provided, among other things:

A 5-year reauthorization of existing programs;

Revisions of some of the act's compliance deadlines;

An expanded program of grants and revolving funds for the construction of sewage treatment plants;

A new nonpoint source control program;

Authority for administrative penalties;

Ten-year national pollutant discharge elimination system [NPDES] permits and partial program delegation to the States;

Continued eligibility for combined sewer overflows [CSO's];

Required passthrough of 205(j) grants to substate planning organizations;

A one-quarter of 1 percent set-aside for investigation and auditing activities within the construction grants program; and

Several site-specific projects to deal with major problem areas.

Mr. Chairman, as a result of jurisdictional issues raised by two other committees, certain provisions were deleted. These were detailed during general debate on June 18. The version of the legislation offered by the gentleman from New Jersey [Mr. Roe] puts back those provisions that were taken out to speed consideration of the bill. I must stress again that this action does not in any way admit that the jurisdictional claims were valid. To the contrary, the committee believes they were not.

Some of the changed provisions in the legislation as a result of the agreement last week include:

Ten-year NPDES permits with mandatory reopener clauses for certain water quality standard and toxic effluent guideline changes:

Exemptions from NPDES permits for storm-water runoff directed around oil and mining facilities if there is monitoring and reporting of the water quality of these diversions;

A limit to December 31, 1984, of extending the electroplating compliance deadline;

A requirement to show technological need to extend compliance for integrated facilities, having more than one effluent guideline, that will result in a final compliance date earlier than would be the case otherwise;

Eligibility for collector sewers under 20 percent State discretionary funding; and

A revised remining provision.

There are limited other additions to this legislation. One provision of note was proposed by the gentlelady from Connecticut [Mrs. Johnson]. It was incorporated in the substitute and will provide grants for alternative water supply to replace contaminated ground water. It is a most appropriate addition to the legislation, and I congratulate the gentlelady on her initiative.

Mr. Chairman, the substitute is excellent and strong environmental legislation. It should be strongly supported in the same bipartisan fashion that it has been developed. I urge all my colleagues to vote for the Roe substitute to H.R. 3282.

Mr. EDGAR. Mr. Chairman, will the gentleman yield?

Mr. STANGELAND. I yield to the gentleman from Pennsylvania.

Mr. EDGAR. I thank the gentleman for yielding.

Mr. Chairman, I want to commend the gentleman for his leadership along with my colleague from New Jersey [Mr. Roe]. I think we do have a good substitute. It is a substitute that took many hours to fashion, and it is a substitute that needed the cooperation of all the Members of Congress as well as the environmental community.

I would like to point out that the substitute includes language that provides an amendment to strengthen safeguards on the 10-year pollution discharge permits to ensure that they will be adjusted to reflect changes in water quality standards. Also, it provides for pretreatment deadlines for integrated facilities that are set 1 year after the first applicable deadline. It provides for an amendment that eliminates added Federal funding for collective sewers, which can promote unwise development.

It eliminates exemptions from pollution discharge standards for two Alaskan pulp mills, but it also allows for a small study to be done in that area. It provides for strict water quality safeguards and monitoring required at mining sites where an abandoned mine has been reopened.

Finally, the amendment sets a firm deadline of December 1984 for the electroplating industry to comply with tough new pretreatment standards.

I thank the gentleman for yielding and for his work on this effort. I think it is important for all to know that the environmental community has signed off on this substitute. They are strongly in support of the provisions that we made, and I want to commend my colleague from New Jersey [Mr. Roe] for including in that substitute the establishment of a National Ground Water Commission.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. Stangeland] has expired.

(On request of Mr. Edgar and by unanimous consent, Mr. Stangeland was allowed to proceed for 3 additional minutes.)

Mr. EDGAR. Mr. Chairman, will the gentleman yield?

Mr. STANGELAND. I yield to the gentleman.

Mr. EDGAR. I thank the gentleman. The National Ground Water Commission is something that passed the House in the last Congress; it is strongly supported on a bipartisan effort to look at our long-term groundwater needs and I commend the committee for including it in the substitute.

Mr. Chairman, I rise in strong support of the committee amendment which corrects a number of objections to the bill which had been raised by members of the environmental community and truly makes this bill an important step forward in protection of the environment.

As a matter of policy, authorizing legislation to extend the Clean Water Act provides essential continuity for our pollution control programs and reiterates the commitment of Congress to the essential goal of fishable, swimable, pollution-free waters. Many of the programs and general authorizations under the Clean Water Act expired in 1982 and we have been operating without a regular authorization since then. The bill before us not only reauthorizes the act but also contains provisions which will advance our positive efforts to clean up the Nation's waters. Among the most important items contained in the bill are increases in funding for the EPA construction grants program; a valuable grant program for the control of nonpoint pollution from rural and urban runoff; and targeted efforts to clean up the Chesapeake Bay and other bays and estuaries.

The bill as reported contained several provisions which concerned environmental groups like the National Wildlife Federation and Sierra Club. I think it is a credit to both the environmental community and the leadership of our Public Works Committee that we were able to sit down together and iron out these substantive differences in order to produce a bill which could command broad support. I want to especially compliment the subcommittee chairman, Mr. Roe and the full committee chairman Mr. Howard, as well as the ranking minority members for their diligence and fairness in this effort. I think Chairman Howard deserves special credit for originally introducing the Water Quality Renewal Act and working through the negotiations which produced the amendment now before us.

Let me briefly outline the modifications to H.R. 3282 which have led to the strong, enthusiastic support of the environmental community:

The amendment strengthens safeguards on 10-year pollution discharge permits to ensure that they will be adjusted to reflect changes in water quality standards.

Pretreatment deadlines for integrated facilities are set at 1 year after the first applicable deadline, ensuring that facilities discharging several pollutants will not escape the requirements of the act.

The amendment eliminates added Federal funding for collector sewers which can promote unwise development.

Exemptions from pollution discharge standards for two Alaska pulp mills are eliminated.

Strict water quality safeguards and monitoring are required at mining sites where an abandoned mine has been reopened.

Finally, the amendment sets a firm deadline of December 1984 for the electroplating industry to comply tough new pretreatment standards.

I believe that the House is wise to accept these strengthening provisions which reassert the tough requirements of the Clean Water Act. Granting delays, variances, and waivers for specific industries or firms can only promote a substantial weakening of the act by encouraging local authorities and the private sector to come to Congress for special relief from pollution control requirements. The long-term consequences of poisoning the environment are more costly than the tough pollution controls. By and large, we have made progress in cleaning up the Nations' water by sticking to our goals, procedures, and deadlines. Yet, it will be difficult to sustain this progress if Congress is seen as backing down from some of the most difficult cleanup tasks or as granting inequitable relief from regulations.

I want to thank the leadership and staff of the environmental groups for their work and support on this measure. I believe it is legislation that the House can be proud of, and I urge support of the amendment.

I also want to briefly mention one specific new provision which I urged the committee to include in its amendment. This is the section which creates a new national commission to study our national ground water problems. The Clean Water Act regulates surface water, while a number of other statutes govern disposal of hazardous waste, but there is currently no overall policy which governs the protection of underground water resources. Over one-half of our Nation's population depend on ground water for drinking water, and discovery of contamination and supply problems in recent years poses a significant new threat to this critical resource. The EPA has been studying this problem literally for years but has come up with no firm, comprehensive policy for dealing with ground water problems. The commission set up in this legislation would focus the debate on this problem and provide recommendations for necessary actions at the Federal and State level in order to protect this resource. I thank the chairman for his support on this legislation.

Mr. LOEFFLER. Mr. Chairman, will the gentleman yield?

Mr. STANGELAND. I yield to the gentleman from Texas.

Mr. LOEFFLER. I thank the gentleman for yielding.

Mr. Chairman, I would like to pose a question to the distinguished gentleman from New Jersey, the chairman of the subcommittee, and that is, Mr. Chairman: Does anything under the new law affect those cities which either have approval or have tentative approval of a 301H permit?

Mr. ROE. No, it does not. Nothing in the new bill will affect that standing at all. They are protected under its provisions.

Mr. LOEFFLER. I thank the distinguished chairman, and I have asked the question on behalf of Congresswoman FIEDLER who is in a budget resolution conference at this moment.

I thank the gentleman from Minnesota.

Mr. STANGELAND. Mr. Chairman, I yield back the balance of my time.

### AMENDMENT OFFERED BY MS. FERRARO TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ROE

Ms. FERRARO. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Ms. FERRARO: to the amendment in the nature of a substitute offered by Mr. ROE. In subsection (b) of section 30 of the amendment, insert "(1)" after "(b)" and add at the end thereof the following new paragraph:

(2) The Administrator of the Environmental Protection Agency shall waive the limitations of subsection (a) if the city of New York is in substantial compliance with a Federal consent decree designed to eliminate the discharge of raw sewage by a date certain.

Ms. FERRARO (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentlewoman from New York?

There was no objection.

Ms. FERRARO. Mr. Chairman, first of all I want to commend the two distinguished gentlemen from New Jersey, my two chairmen, Mr. HOWARD and Mr. ROE, and the other Members of the Public Works and Transportation Committee for bringing this important piece of legislation to the floor. The Water Quality Renewal Act of 1984 has many admirable features.

For example, the bill provides for a badly needed increase in the construction grants program from the current $2.4 billion per year to $2.9 billion in fiscal year 1985 and $3.4 billion for the following three fiscal years. In addition, I'm pleased to note that the problem of combined sewer overflows, a serious concern in many older communities, is addressed in the bill.

Regrettably, there is one section of the bill, section 30, that I must oppose and it is to this section that my amendment speaks. This provision which is aimed solely at New York City, purports to increase environmental protection by hastening the construction of two wastewater treatment plants and thus ending raw sewage discharges.

In fact, the city of New York already is proceeding on an accelerated schedule to complete those plants and currently is 6 months ahead of the schedule set forth in a Federal court order governing their completion.

Unfortunately, in discussions of this provision there have been several inaccurate statements made. For instance, it has been asserted that New York by its own admission, discharges 220 million gallons of raw sewage every day. Though the design capacity of the two plants combined is 220 million gallons of water a day, the estimated actual flow from the two areas of the city that will be served by the new plants now under construction totals approximately 195 million gallons a day, of which 99.99 percent is pure water. Less than one one-hundredth of 1 percent consists of solids and organic matter.

It has been contended that discharges from New York head directly for the beaches of New Jersey. In fact, according to models of the New York-New Jersey harbor area accepted by EPA, the biochemical oxygen demand, suspended solids, and bacteria from North River and Red Hook are totally dissipated and unmeasureable before reaching even the Staten Island beaches, which are far closer to the outfalls than the New Jersey beaches. My colleagues should be aware that both the New York City beaches and those in New Jersey fully comply with bathing water quality standards.

This is not to deny that trash and debris can sometimes be seen washing up on New Jersey beaches. But the major source of this material is discharges from New Jersey storm sewers, as well as combined sewer overflows from both New Jersey and New York.

Moreover, the relevant consideration here is not whether a discharge is raw or treated. In terms of the environmental impact of municipal wastewater discharges, the relevant consideration is how clean is the discharged water. For example, of the 14 New Jersey plants discharging into the Hudson-Raritan Estuary, all of which provide some level of treatment, 4 plants actually have higher levels of organic pollution than the raw discharges from the North River outfalls, and 5 have comparable levels of organic pollution.

One further point made is that this provision is neither punitive nor discriminatory. On its face, this statement is simply not so. This provision adds new requirements to the Clean Water Act that apply only to New York City, despite the fact that there are 242 communities throughout the country with raw discharges. The Clean Water Act already contains sufficient civil and criminal enforcement authority, which applies equally to all communities, to compel continued progress in cleaning up the Nation's waters. Imposing additional sanctions piecemeal through the political process is bad public policy, and in this case, unfairly suggests that New York has not made a good faith effort to modernize and upgrade its facilities.

Mr. Chairman, New York City has spent $1.5 billion in the past decade to upgrade nine sewage treatment plants to full secondary treatment. Work continues on two additional plants and the new plants, North River and Red Hook, will both achieve full secondary treatment later this decade. This is indicative of the tremendous effort the city is making, and has been making, to improve regional water quality.

The claim has been made that the language in section 30 will not harm housing and commercial development in New York City. Unfortunately, this is not the case. Because the provision is silent with respect to enforcement, a court enforcing the amendment could call for a moratorium on new sewer hookups. The prospect of such sanctions would have a chilling effect on real estate development in New York City.

The Clean Water Act is working. Progress is being made to clean up the Nation's waters. We should not retreat from a national approach. We should not impose unique penalties upon one particular community—particularly when that community is moving aggressively to end raw discharges ahead of schedule.

The amendment I am offering today requires the EPA Administrator to waive the limitations set forth in subsection (a) of section 30 as long as the city of New York is in substantial compliance with the terms of the Federal consent decree. The current language in section 30 would have a chilling effect on housing and commercial development in New York City. We must remove this cloud of uncertainty, which threatens one of New York's most important industries.

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The CHAIRMAN pro tempore. The time of the gentlewoman from New York (Ms. Ferraro) has expired.

(By unanimous consent, Ms. Ferraro was allowed to proceed for 3 additional minutes.)

Ms. FERRARO. Mr. Chairman, today New York is being singled out; tomorrow it could be other communities. Mr. Chairman, let us continue to work together to find solutions to our remaining water problems, which are not exclusive to New York.

I urge my colleagues to support the amendment.

Mr. BIAGGI. Mr. Chairman, will the gentlewoman yield?

Ms. FERRARO. I am happy to yield to the gentleman from New York.

(Mr. BIAGGI asked and was given permission to revise and extend his remarks.)

Mr. BIAGGI. I thank the gentlewoman for yielding.

Mr. Chairman, I rise in vigorous support of the amendment offered by my distinguished colleague from New York, Ms. Ferraro. I do so in the spirit that its passage will certainly compliment an otherwise fine piece of legislation, H.R. 3282, absent section 30 which is distinct both in its content, and its intent.

Section 30 bars one city, the city of New York, from dumping more raw sewage into its water after March 15, 1986, than the average of what was dumped in the preceding year, unless there is a significant interruption in the operation of the city's treatment plant. The Ferraro amendment would allow this provision or limitation to be waived if the Administrator of the Environmental Protection Agency finds that the city is in substantial compliance with a Federal consent decree designed to eliminate raw sewage discharges by a certain date.

I am most obviously troubled by the way section 30 of this bill singles out the city of New York. As he well knows, I have the highest regard and respect for the chairman of the Public Works Committee, Mr. HOWARD. His legislative career includes a veritable litany of significant legislative accomplishments which have benefited all areas of the Nation including New York City.

However, section 30 of this bill represents an exception. It seems to be an extension of the undeclared war which has broken out between New Jersey and New York, which has managed to infestate the legislative process. This provision is but one example. Several weeks ago, the House Merchant Marine and Fisheries Committee became embroiled in another area of dispute between our States, that related to ocean dumping.

The CHAIRMAN pro tempore. The time of the gentlewoman from New York [Ms. FERRARO] has again expired.

(On request of Mr. BIAGGI and by unanimous consent, Ms. FERRARO was allowed to proceed for 2 additional minutes.)

Mr. BIAGGI. If the gentlewoman will yield further, while this undeclared "war" has perhaps escaped the attention of most of my colleagues outside the two States, it is a matter of deep concern to me. One of the characteristics of this war which disturbs me the most is the consistent tendency to misrepresent critical facts about New York City, and then use these misrepresentations as a means of justifying a particular policy change which inevitably ends up harming the city.

When we refer to the matter before us, we find this to be the case once again. A number of the main arguments used by the proponents of this are either misleading or factually incorrect. Let me present several of the more prominent ones.

One of the reasons used to justify the Howard language is that it is needed to effectively place a cap on the amount of raw sewage that New York City can discharge, and that the city discharges some 220 million gallons of raw sewage daily.

This statement is simply false. The 220 million gallon figure is based on the designed capacity of the two sewage treatment plants currently under construction; one at North River, the other at Red Hook. The fact is that the amount discharged is more than 10 percent below that cited by the proponents of Section 30. Further, of the 195 million gallons discharged, less than one one-hundredth of 1 percent consists of solid or organic matter—the rest is simply water.

Another patently misleading statement is that the raw sewage discharges from New York head directly to the beaches off New Jersey. Mathematical models of the New York-New Jersey harbor approved by the EPA for use as a planning tool, show that the majority of sewage discharges is largely dissipated and unmeasurable prior to even reaching the beaches of Staten Island, which come before New Jersey beaches in terms of the flow of sewage. This is before the treatment plants actually open up and the situation will only improve at that point.

Another misleading and factually false statement that has been advanced in support of Section 30 is that New York City is as much as 30 years behind in its schedule of sewage treatment plant construction and years behind other cities. The findings of a 1982 EPA needs survey finds that nationally, another $31 billion of municipal sewage treatment plant construction is needed in every State of the United States, simply to comply with the secondary treatment requirement of the Clean Air Act. This includes more than $2 billion needed to complete projects in New Jersey. New York City at this time is ahead of schedule in construction of its North River and Red Hook plants. In the case of Red Hook, it is almost 7 months ahead of schedule and in the case of North River almost 6 months ahead of schedule.

The proponents of the bill contend that the amendment is neither punitive nor discriminatory against New York since it simply requires New York to do what every other city has done, stop discharging raw sewage. This statment is totally false, the EPA lists more than 240 municipalities with raw wastewater discharges nationally. Further, if one seeks to distinguish sewage on the basis of whether it is raw or treated, and then apply this to the argument about environmental impact, it presents an interesting issue. Treated discharges can be much worse than "raw" discharges; the relevant consideration is how clean the discharged water is, not the kind of treatment it has received.

The Ferraro amendment, unlike the section it seeks to eliminate in the bill, is carefully and clearly written and does not suffer from the vagueness of the Howard language. The court orders referred to in the Ferraro amendment would result in the North River plant having to be operational by May 1, 1986. This is not dilatory in any way and if anything, would most certainly promote a timely completion of this important project.

Another deliberate intent of the Howard language is too far beyond the scope of just the Clean Water Act. His language could have the effect of slapping a construction ban on the city of New York. This stems again from the vagueness associated with some of the terms in the amendment about what the ceiling might be on discharges of raw sewage and how it might be enforced. However, the language is clear relative to the fact that building will not be permitted if the ceiling is violated, which no matter how you slice it, is a construction ban.

The Clean Water Act has always been applied in an equitable fashion to all cities and localities, including New York City. This is a clear attempt to deviate from that process and have it apply in a punitive manner to the detriment of New York City.

In the final analysis, this is a bad provision in an otherwise good bill. the Ferraro amendment is the way to deal with this thorny, but entirely unnecessary problem.

I call upon the House to adopt the Ferraro amendment so we can legislate a "cease-fire" in this undeclared war between the States of New York and New Jersey. We have too many common concerns without inventing new problems of controversy.

Mr. WEISS. Mr. Chairman, will the gentlewoman yield to me?

Ms. FERRARO. I am happy to yield to my colleague, the gentleman from New York.

(Mr. WEISS asked and was given permission to revise and extend his remarks.)

Mr. WEISS. I thank the gentlewoman for yielding.

Mr. Chairman, I rise very briefly to express my strong support for the amendment offered by the gentlewoman from New York and to suggest that in the course of debate we sometimes tend to draw lines of conflict which are not necessary to draw.

It is my understanding that the distinguished chairman of the Committee on Public Works and Transportation, as well as the distinguished chaiman of the subcommittee, both of whom are good friends of mine and who are from New Jersey, really do not intend, and say that they do not intend, to do any harm at all to New York, and I believe that.

The CHAIRMAN pro tempore. The time of the gentlewoman from New York [Ms. FERRARO] has again expired.

(On request of Mr. WEISS and by unanimous consent, Ms. FERRARO was allowed to proceed for 2 additional minutes.)

Mr. WEISS. If the gentlewoman will yield further, it seems to me if they were to accept the amendment that is offered by the gentlewoman they would really still have the best of all possible worlds. It would, in fact, be a concession on behalf of New York that we want to be in substantial compliance with the court-mandated timetable which has been agreed to under the consent decree. At the same time we would have a clear spelling out that so long as there is substantial compliance with the court-mandated timetable that, New York would not have to be concerned about there being this unintentional chilling of those who wish to engage in commercial or residential construction in the city of New York.

□ 1520

Now, I have a special interest in this matter. The North River pollution control plant is in my district, and we have been watching with great concern the pace of construction. I think my colleagues ought to know and they ought to remember that the city has done everything within its power to meet the timetable. Unhappily, with the administration's cutback of funding for pollution control purposes, significant periods of time went by, and because of that cutback and because the city was on the verge of bankruptcy for some period of time, it was in no position to move ahead faster than the court had mandated.

In spite of that, we are 6 months ahead of the timetable agreed to in court. So if the two gentlemen from New Jersey, who I know want to do the right thing by the city, would look objectively at the gentlewoman's amendment, perhaps they could find it appropriate to accept it. We would then satisfy both New York and New Jersey instead of exacerbating a situation which should never have been allowed to even suggest that there is conflict between us.

Mr. Chairman, I thank the gentlewoman for yielding.

Ms. FERRARO. Mr. Chairman, I want to thank the gentleman from New York [Mr. WEISS] for his very concise and clear statement. He makes the point that New York is making every effort to comply with the laws.

As a matter of fact, we are 6 months ahead of time. We have six construction crews working. The only place we could put another construction crew is if we put them on a barge out in the water. There is the intent to finish, there is the desire to finish, and this language is merely a punitive effort directed at New York City.

Mr. Chairman, I urge my colleagues to support the amendment.

Mr. SCHEUER. Mr. Chairman, I move to strike the requisite number of words.

I will not use all of my 5 minutes. I just want to add to the words of my distinguished colleague, the gentleman from New York [Mr. WEISS], and say that New York is going now above and beyond the call of duty.

We are functioning under a consent decree. We are ahead of the schedule outlined in the consent decree. When the two plants under construction are finished, one in May 1986 and one in May 1987, we will be in compliance.

There are 242 cities around the country that are substantially situated as New York City is. They are not in compliance with all of the EPA requirements, but they, as we are, working on it. For some obscure reason that I do not understand, New York City was the only city that was selected for this rather invidious treatment. I know it was not meant to be invidious treatment, but on the face of it, it is, and I would urge my colleagues, the gentlemen from New Jersey [Mr. HOWARD and Mr. ROE], who have been friends and colleagues of mine for many, many years, to accept the amendment offered by the gracious gentlewoman from New York. I think it would be the collegial thing to do.

New York is aimed right at compliance in a matter of months. They are headed toward compliance, and they are in compliance with the court order.

Mr. Chairman, I would urge that we have collegial and friendly action from our friends across the Hudson.

Mr. McGRATH. Mr. Chairman, I move to strike the requisite number of words.

(Mr. McGRATH asked and was given permission to revise and extend his remarks.)

Mr. McGRATH. Mr. Chairman, I rise in support of the amendment offered by the gentlewoman from New York [Ms. FERRARO].

[Mr. McGRATH addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. HOWARD. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

(Mr. HOWARD asked and was given permission to revise and extend his remarks.)

Mr. HOWARD. Mr. Chairman, this is a very important amendment.

Members might ask, why is the Congress about to pick on New York City? There is no large city in this Nation other than new York City which dumps any raw sewage into the waters to be sent down somewhere else. I wonder if the 240 cities that are mentioned that have some raw sewage add up to this amount all put together. New York City dumps and have been dumping 220 million gallons of raw sewage a day into the Hudson River. That is 220 million gallons a day, enough to fill a football field at the Meadowlands arena to a height of 67 stories high, two-thirds the height of the huge complex buildings at the foot of New York. That is 12 square miles to a depth 1 inch thick each day.

At this rate, if New York City did not want to treat but just kept its raw sewage, it would cover the entire city, all five boroughs, in 1 month. But that does not happen. It is dumped into the waters of the Hudson River. It flows down on the seashore areas, and for so many years people who live in New Jersey and the New Jersey seashore that depend upon clean beaches and clean water have said that we must accept this from New York City because New York City is so big and powerful and rich and important that the other communities just have to take second place.

I think the time has come to just assure that New York City meets its commitments. What we did in this legislation is this: We did not stop construction. We will not stop construction if New York City means what it says. It sets a date of March 15, 1986.

We had an earlier date, but in discussions with a member of our committee, the gentleman from New York [Mr. MOLINARI], we set that date back to March 15, 1986, saying that that puts a cap and a limit on how much New York City may discharge into the river to come down into New Jersey and Long Island shores.

Now, New York City is working on its North River plant. Its North River plant is due to be in operation, treating only primary raw sewage, by November 1985. Under our amendment, we figure it on an average per month basis of the year, starting prior to March 15, 1986, which gives them 7½ months of heavy discharge of raw sewage 4½ months after the plant opens. When that plant opens, it will treat 150 million gallons a day. So they do not have that much leeway to work on.

What about the fact of what would take place if something happens? If there is a strike that delays the construction of that plant, if there are heavy overflows due to rain, if lightning strikes the plant and there is a delay, in the substitute amendment offered by the gentleman from New Jersey [Mr. ROE] and myself there is a provision that grants the head of EPA the right to extend the time limit for compliance. So if New York City means what it says, it will have no trouble at all.

New York City says that as far as dumping raw sewage, they are 6 months ahead. If we look at the papers, they are 49 years behind. We have been complaining about this since 1935, and it is about time consideration is given to those downstream. New York City dumps this raw sewage and they do not have to worry; it immediately leaves their area, and they get clean water from communities upstream that are taking of their sewage.

Nobody is picking on New York. I love New York. The Committee on Public Works and Transportation loves New York. There is no committee in this Congress that has been a better friend of New York City down through the years than our committee.

They have a problem with Newtown Creek in Brooklyn that would cost New York City $250 million to get into secondary treatment at the proper time. What did our committee do? We wanted to help them. We put that project on a demonstration basis, and instead of having the Federal Government only pay 55 percent, we grandfathered in the old 75 percent. We do not hear very much thanks from New York City on that effort that is being made this week in this Congress.

The CHAIRMAN pro tempore. The time of the gentleman from New Jersey [Mr. Howard] has expired.

(By unanimous consent, Mr. Howard was allowed to proceed for 2 additional minutes.)

Mr. HOWARD. Mr. Chairman, I do not know why New York City is opposing this amendment. It merely says that we want to make sure that they do what they say they are going to do. We give all kinds of provisions for New York City to be in compliance should something happen that is not its fault.

The only reason they might oppose this would be if they do not want to keep their commitment, if they intend to go back to the courts again, as they have done so often and gotten so many extensions and so much relief because they are so big and powerful and rich and important, more so than the rest of the country. I do not know why they oppose it.

The largest contractor in New York City called me a couple of weeks ago, concerned that it might stop construction in some way.

□ 1530

I told him, I said, "Just have one of your attorneys read the amendment and if you have any problem at all, call me." I have not heard from him in 3½ weeks.

There is no problem, if they intend to keep their commitments.

A vote for this amendment by the gentlewoman from New York is a vote to say that New York City should not have any cap, any limit, any stopping at all of any amount of raw sewage that they want to dump in the rivers and dump on the seashore areas of other parts of the country. I just think it is unfair.

It is a sensible, reasonable amendment. After 49 years, it is time for us to say to New York, some other areas are just as important as you are.

I urge a no vote on the amendment.

Mr. STANGELAND. Mr. Chairman, I move to strike the requisite number of words.

(Mr. STANGELAND asked and was given permission to revise and extend his remarks.)

Mr. STANGELAND. Mr. Chairman, I am not going to take the 5 minutes. I think the chairman of the Committee on Public Works and Transportation, the gentleman from New Jersey [Mr. Howard] has very eloquently spoken of the issues and the problem and the concern.

Mr. Chairman, I rise in strong opposition to the amendment offered by the gentlelady from New York [Ms. Ferraro]. This amendment would be of great harm to a provision in the legislation that seems both reasonabale and environmentally desirable. It is understandable that the distinguished representative from New York wants to protect New York City. However, what is the cost to the environment? It would leave New York City with the opportunity to continue dumping raw sewage in the Hudson River. This leaves New Jersey's shores and the total environment with the problem of New York's untreated sewage.

New Jersey has enforced building bans in 77 municipalities since 1973 until clean water projects are built. No such bans are required by the provision in the bill. It only limits raw sewage discharge. No municipality in the United States has been allowed to flush 220 million gallons a day of raw wastes into the waterways. New York City's own project completion projection is November 1985, which is 6 months ahead of schedule. The provision in the bill will only safeguard the assurance that no further increases of raw sewage dumpage are permitted. The provision would limit discharge to its present conservative 220 million gallon per day estimate by May 15, 1985. It stands to reason, therefore, that this amendment can undermine the good-faith agreement of New York City to clean up its raw sewage dumping, which affects both New York and New Jersey areas downstream.

The provision as reported does contain appropriate language to provide for adequate handling of unforeseeable problems that could preclude the primary treatment of effluent. It is not punitive, as it only limits the amount of raw sewage that can be dumped and safeguards the speedy completion and utilization of the facilities needed to treat the sewage. The committee chairman [Mr. Howard] has made a reasonable proposal; he could have proposed a lower or zero level of discharge, after all.

I, therefore, strongly oppose this amendment. It is an unnecessary reaction to a timely and effective provision. I urge all my colleagues to vote against the Ferraro amendment to H.R. 3282.

Mr. SNYDER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong opposition to the amendment of the gentlelady from New York. On its face, the amendment appears to be benign. On closer examination, however, I believe that my colleagues will agree with me that the amendment is designed to allow the city of New York to continue dumping large amounts of raw sewage or inadequately treated wastewater into the Hudson River and, ultimately, onto the beaches of New Jersey.

Mr. Chairman, I am sure you are aware of the high level of controversy that has surrounded the issue of ocean dumping of sewage sludge by the city of New York in the New York Bight. The battle over whether this pollution of the waters between New York and New Jersey has been raging for almost 10 years and, as my colleagues know, it is an issue that is still unresolved. I would point out that that issue is different from the one under consideration here today and yet, what we are being asked to do by the gentleladay on behalf of the city with respect to the Clean Water Act is very much related to the problem of New York Bight water pollution. The city of New York is currently discharging 220 millon gallons a day of raw sewage into the Hudson River and hence into the New York Bight from the two wastewater treatment plants that would be affected by the gentlelady's amendment. Continuation of this practice is a totally untenable and improper situation, and we should not allow it to continue.

The gentlelady may tell us that there is really no problem under her amendment because all she is asking for is the right to allow New York City to continue polluting the Hudson River from these two plants in accordance with a court order. Two points should be focused on. First, it is the Congress, not the courts, that should be properly determining when pollution of our Nation's waters should cease. In this regard, I am convinced that the view of this body and, for that matter, of the entire Congress as well as of the American people is that this incredible level of pollution from New York City should not be allowed to continue 1 minute longer than is absolutely necessary. Second, and most importantly, it must be recognized that what the gentlelady is asking us to do is to vote in favor of additional water pollution by New York City and to vote against language that would require the city to eliminate its pollution sooner than she proposes. This is totally inapporiate, runs counter to the entire thrust of H.R. 3282, is in abrogation of the agreement reached by the committee leadership to resist amendments which weaken the act, and should be resoundingly defeated here today.

Mr. Chairman, I think that what the chairman of our committee has said bears repeating, and that is that, if anything, the bill's current section 30 language relating to this matter is too weak. Up until March 15, 1986, New York City can continue to discharge more than the 220 million gallons of raw sewage a day, and only at that point, on March 15, 1986, do they take the 12 months average and set that as the level that they cannot exceed.

Mr. Chairman, as far as I am concerned, the Ferraro amendment should be defeated. If anything, amendments should perhaps be offered to tighten up on the city of New York to see that they do not do what no one else in the country is allowed to do.

Mr. Chairman, I oppose the amendment and I urge my colleagues to do likewise.

Mr. WEISS. Mr. Chairman, I move to strike the requisite number of words. I rise in support of the amendment.

Mr. Chairman, I would like to say at the outset that I have nothing but the fondest of feelings and memories for and of New Jersey. I grew up in New Jersey.

The one thing that people from New York and New Jersey ought to refrain from is attacking one another on environmental grounds. The sad and unhappy fact of life is that both New York and New Jersey for far too long have allowed their water and their air and their land to be polluted. If anybody wants to have some sense of some of the problems that New Jersey had, and I do not want to single out New Jersey, but just to try to create a balance here, there was a time when Secaucus, NJ, just barely across the George Washington Bridge, used to be known as the "pig capital" of the world and the odors that wafted over into New York were just unbearable.

Well, now the pigs have gone from Secaucus and what we have got are chemical plants directly across the bridge and running for about 15 miles into New Jersey, which send forth the most horrendous odors and gases and mists and acids imaginable.

We each, New York and New Jersey, have a long way to go. I think we ought to be looking for ways to improve our respective environments rather than taking the occasion to be critical of one another.

What I have said has nothing to do with an intent to draw criticism on New Jersey, but simply to suggest that both of our States really have some very serious problems that ought to be addressed.

Now, New York with the cooperation of the Committee on Public Works and Transportation, as a matter of fact, is addressing its water quality problems and its pollution problems. We are in the midst right now of having two major new pollution control plants built, one as I indicated a few moments ago, the North River pollution plant on the Hudson River in my district; the other, the Red Hook plant, which is the district of my colleague, the gentleman from New York [Mr. SOLARZ], and both of those plants are moving ahead apace; indeed, ahead of schedule. Pursuant to the consent decree under which construction is proceeding there are provisions for no fewer than 58 specific steps that must be taken to construct the North River treatment plant, along with specific deadlines and stringent penalties of up to $25,000 per day for any failure to meet those deadlines.

So it seems to me that the inducement, the carrot and the stick, already exist in that court order and what we are really suggesting, what the gentlewoman from New York is suggesting by her amendment, is that we recognize the effort that New York is making so long as it is in substantial compliance with the very stringent consent decree. In essence the amendment says that it is not fair to single out New York for punishment and penalties which would not apply to any other municipality.

Mr. Chairman, I commend the gentlewoman from New York for offering her amendment. It is a very modest, very moderate, very reasonable amendment.

I would like to think that all the Members of the House, including those from New Jersey, would find that it was an amendment that they not only could, but would with eagerness support.

The amendment attempts to mitigate a provision in the Water Quality Renewal Act that would unfairly penalize New York City—and New York City alone—should it fail to build two sewage treatment plants on schedule.

I have long advocated a strong Clean Water Act, and I want to applaud my colleagues on the Public Works and Transportation Committee and in the environmental community for working so diligently to develop the compromise on which we will vote today.

However, I must take exception to section 30 of the bill, which singles out New York City for punitive sanctions while adding no environmental benefits.

On its face, section 30 appears to increase protection of the environment by limiting increased discharges of raw sewage by the city after March 15, 1986. But the fact is that New York City is already building modern treatment plants as rapidly as is humanly possible to accommodate the untreated sewage.

These facilities, the North River plant in my district and the Red Hook plant in Brooklyn, are actually 6 months ahead of a construction schedule established as part of a court-approved consent decree between the city and the Environmental Protection Agency. North River will be ready by November 1985 and Red Hook will begin operation by December 1986.

The consent order sets forth no fewer than 58 specific steps that must be taken to construct the North River treatment plant, along with specific deadlines and stringent penalties of up to $25,000 per day for any failure to meet those deadlines.

Section 30 would plainly add nothing to the strong incentives already embodied in the consent decree and the Clean Water Act. The provision would, though, be unreasonably punitive if, for reasons beyond the city's control, the construction schedule slipped or one of the city's existing plants malfunctioned.

Moreover, the potential for a court-ordered moratorium on new sewer hookups created by section 30 would have an almost immediate chilling effect on real estate investment and development in the city.

New York City has demonstrated its good faith over the past decade by spending more than $1.5 billion to upgrade nine plants to full secondary treatment capacity. Today, it is among 242 communities nationwide which still have additional treatment plant construction to complete. Yet section 30 would punish only New York.

This amendment directs the Environmental Protection Agency to waive section 30 if the city remains in substantial compliance with the consent decree. Its passage will soften the unnecessarily hardline approach taken in the bill, and recognize that New York is progressing—under Federal court supervision—as rapidly as possible to comply with the Clean Water Act.

Mr. MOLINARI. Mr. Chairman I move to strike the requisite number of words.

(Mr. MOLINARI asked and was given permission to revise and extend his remarks.)

Mr. MOLINARI. Mr. Chairman, I am in rather an unusual position in that coming from New York City and hearing the dialog that took place on the floor, it seems like this is a New York versus New Jersey fight, and indeed there have been a number of confrontations in the last year or year and a half between the States of New York and New Jersey, which I think are very unfortunate.

The Port Authority, naming one, the HUD grant to Jersey City was another one, issues where I felt the city of New York was wrong.

I must have mixed feelings because I come from the city, and yet I must also recognize the fact that the chairman of the committee, the gentleman from New Jersey [Mr. Howard], at my request put in a number of amendments that are going to affect the quality of the waters in my region.

I also would like to point out, although I am going to support the gentlewoman from New York, the raw sewage that comes from New York City and Manhattan before it gets to the district of the gentleman from New Jersey [Mr. Howard] and the rest of New Jersey, stops off at a place called Staten Island.

□ 1540

And, Mr. Chairman, I represent that area and our waters are polluted. They are not fishable and swimable and they have been closed and we have been seeing a very slow improvement to the quality of those waters.

If you look back historically we are not without sin. The city of New York is not benevolent. We were dragged into court and that is the reason why we are building the plants that we are building today.

So we have been at fault. We have been at fault and the fact is that the gentleman from New Jersey [Mr. Howard] has a problem affecting his district that affects my district, as well. I think not only in the city of New York but in other areas, we should enforce the laws more strignently.

I want to thank the chairman for the amendment, for the Interstate Sanitation Commission amendment which directly affects the waterways we are talking about here today. Reluctantly I must vote with the gentlewoman from New York against the chairman, even after what you have done for me.

I would just like to engage in a little colloquy with the gentleman from New Jersey [Mr. Howard] if I may.

The question has been raised about strikes. Suppose there is a problem, an unforeseen problem in construction and the completion of construction of the North River plant of any nature, perhaps a storm. We just had a pier collapse in my district that was unexpected. What impact would that have upon the city of New York and the construction of future building units in the city of Jersey?

**Mr. HOWARD.** Will the gentleman yield?

**Mr. MOLINARI.** I yield to the gentleman from New Jersey.

**Mr. HOWARD.** It would have no effect because there is a section that talks about significant interruption either in the construction or in the operation of sewage treatment plants which permits the Administrator of the Environmental Protection Agency to waive the requirements in this legislation. Certainly we would want to take care of that. Anything that is not New York City's fault, whether it be lightning striking or a strike which would hold up the construction of a plant, or something that would happen in the operation of it would certainly be protected.

We want to be very reasonable and fair about that.

**Mr. MOLINARI.** As I understand it, the cap you are imposing here remains the same when the North River goes on line. We are talking about 150 million gallons of sewage that would be treated, and we expect that to occur somewhere around October or November of 1985. This cap does not reduce it; it remains at the current level?

**Mr. HOWARD.** That is right. They would start treating 150 million gallons from November 1985 so they would calculate the amount they are discharging from November until March, 4½ months. But they would have also calculated into that the 7½ months prior to that where they would be dumping 150 million additional gallons per day. So it gives them plenty of leeway.

I think a lot of people say too much leeway, but they certainly have much leeway.

**Mr. MOLINARI.** But the point I am trying to make, and I hope you will clear up this question, is once the North River goes on line, the city of New York would have the latitude to build more buildings provided they could otherwise do it, and dump the sewage up to the amount of that cap?

**Mr. HOWARD.** That is right. I cannot see any problem where New York City is in any danger whatever of having any kind of interruption or threat or question about expansion of construction. None whatever.

**Mr. MOLINARI.** I thank the gentleman.

**Mr. HUGHES.** Mr. Chairman, I move to strike the requisite number of words.

(Mr. HUGHES asked and was given permission to revise and extend his remarks.)

**Mr. HUGHES.** Mr. Chairman, I will not take the full 5 minutes. But this is such an important issue to us in New Jersey I thought I would want to talk just a couple of minutes.

I say to my colleagues from New York I, too, regret that we have this confrontation. I am sorry the gentleman from New York [Mr. Weiss] left New Jersey, but you left about the time that we started getting this pollution, so you probably left at a very timely moment.

But the Near Bight Apex is one of the most severely degraded bodies of water in this country, if not in the world. A number of factors contribute to it. Certainly the 220 million gallons of raw sewage is one factor. The literally millions of tons of sludge, sewage sludge we deposit in the Bight Apex contributes to it. Certainly the runoff contributes to it, as well as industrial and domestic discharges.

But the problem has become so serious that it threatens our tourist economy and our fishery resources.

Between my distinguished colleague, JIM HOWARD, and myself, we represent probably most of the coast of New Jersey. I have some of the finest seashore communities that you will find anywhere in the country, and our stock-in-trade is our clean beaches and our waters, just like the stock in trade for my fishery resources is a healthy marine environment.

Not a month goes by any more that you do not see the Department of Environmental Protection or the Food and Drug Administration closing down new sections of our ocean to fishing because the seafood is contaminated with FCBs and other harmful substances into the soft matter of our fish.

Our bluefish, in particular, are contaminated.

It has only been a few years ago that we had an oxygen depletion that threatened our tourist economy. That situation was certainly precipitation, in part, by the raw sewage that is going into the Raritan and Hudson estuaries, as well as the sludge that we dump just off our beaches. And the question is when are we going to stop it.

All this bill says, in essence, is that we want New York City to comply with the court order. If there are extenuating circumstances, as the distinguished chairman of the Public Works Committee has indicated, the city of New York can apply for a relaxation of time constraints.

But all we are asking is that at this point New York City comply with what in essence is an order that these facilities be completed expeditiously return to court, as New York City has done time and time again, for extension after extension.

They have done that with regard to raw sewage. They have done the same thing with their sewage sludge, which they dump in the ocean. All we are asking at this point is that they finally develop land based alternatives like other communities have done.

Ms. FERRARO. Will the gentleman yield?

Mr. HUGHES. I will be happy to yield.

Ms. FERRARO. I just wanted to make one comment. That is about the Raritan estuary which you mentioned.

There is a discharge into that particular tributary, but what it is is we have 9 of the 14 New Jersey treatment plants that are actually putting in higher levels of organic pollution than that raw discharge coming from New York City's river, even though it has been treated on a primary level.

Mr. HUGHES. If I can reclaim my time, let me say to the gentlewoman that she is right. There are certain New Jersey communities that are contaminating the Raritan estuary and are also ocean dumping sewage sludge. And I have no sympathy with what they are doing to the Bight Apex.

My point is we have created a literal cesspool off of our beach and all we are asking is that we begin finally to begin to dispose of waste material in a more environmentally accepted fashion. And certainly dumping into the ocean or permitting raw sewage to be dumped into our waterways is not going to solve any problems. It is going to create more problems, economic, health, and other problems.

Mr. HOWARD. Will the gentleman yield?

Mr. HUGHES. I will be happy to yield to my colleague.

Mr. HOWARD. I thank the gentleman for yielding.

I think it is also important to point out that in New Jersey there are communities that have self-imposed construction bans where you may not build anything additional unless you treat the sewage that is produced by that.

New Jersey has done that.

Mr. HUGHES. The gentleman's point is well taken and we have made progress. We are down from over 100 polluters in the ocean to just a handful, New York City just happens to be the biggest of the polluters in the Bight Apex.

I would urge my colleagues to reject the amendment.

Mr. SOLARZ. Mr. Chairman, I move to strike the requisite number of words and I rise in support of the amendment.

I will be very brief. I rise in strong support of the amendment offered by the gentlewoman from New York. My understanding is that New York City is doing its best to deal with this problem. It is even a few months ahead of schedule in dealing with it.

There are many other communities around the country which have not even begun to meet the timetables. I think this does unfairly single out the "Big Apple." In that sense it is perhaps a bill of attainder.

I think that it is unfair.

I am confident that New York City, with the leadership of Mayor Ed Koch, will be doing everything that it is humanly possible to do to clean up this problem which is of such great and understandable concern to our friends from New Jersey.

Mr. Chairman, I rise in support of

the amendment. I do so because I believe that section 30 of the bill is ill conceived and the amendment being offered will go a long way toward curing its defects.

Section 30 masquerades as an environmental provision by calling for the elimination of raw sewage discharges in New York City and expressing the will of Congress that a reluctant city be put on notice that further delays will not be allowed.

This characterization of New York City's behavior is unwarranted. There is no need or justification for singling it our for special warnings, requirements, or sanctions. Furthermore, no benefit will result from doing so. The real result is rhetoric without any real environmental substance. I believe this kind of provision sets a bad precedent and is not in the best interests of effective clean water legislation.

The city and State of New York have not been reluctant or recalcitrant in the repair, upgrading, and construction of treatment plants required under the Clean Water Act. Over $1.5 billion in Federal, State, and local funds have been spent in the last decade to upgrade nine of the city's plants to full secondary treatment. These investments have had to be made based on priorities for the greatest improvements in water quality, in accordance with the State priority list and the availability of Federal construction grant funds.

New York City is not alone in having additional work remaining. 242 communities around the country have untreated municipal wastewater discharges. And hundreds of communities in every State of the Nation have a total of over $30 billion of construction that must be done to comply with the secondary treatment requirement of the Clean Water Act. If all the requirements of the Clean Water Act are included, the total needs are over $188 billion.

The Clean Water Act already contains clear-cut requirements for ending raw discharges and adequate sanctions, both civil and criminal, for compelling compliance with these requirements. These requirements and sanctions ought to be applied in an evenhanded manner. A basic purpose of the Federal Water Pollution Control Act of 1972, which established the current law, was to establish a national program with uniform requirements. Section 30 would depart from this 14-year precedent and begin to go back to a system or regional disparities based upon differing perceptions of the values of clean water and the vagaries of the political process.

Section 30 of the bill produces no environmental benefit. The city is proceeding with construction of the needed treatment plants as quickly as possible. Adequate funds are now available, and the city and State commitment to the projects is secure. In fact, through a remarkable effort, the city is actually ahead of the schedule set forth in the governing court order for construction of the plants. I am sure many of you can appreciate how unusual for a construction project of this magnitude to actually run ahead of schedule.

This construction is proceeding under the terms of a consent agreement incorporated in a Federal court order. Compliance with its terms is being administered by the Federal district court for the southern district of New York. The order implements the requirements of the Clean Water Act, and contains stringent penalties for violating any of the numerous deadlines. Given that this matter is currently being handled in the courts, that it is apparently being handled effectively, and that the courts are well equipped to deal with the complexities of such vast undertakings, it would be extraordinary for Congress to step in at this time.

There is nothing unique about construction schedules being governed by court orders implementing the Clean Water Act. As of mid-1981, no less than 20 major cities and sewer authorities were under similar court orders, including Los Angeles, the District of Columbia, Chicago, Detroit, and Philadelphia. Federal court involvement does not indicate bad faith for any of these communities or for any of the other hundreds of communities which have not yet achieved compliance with the ambitious requirements of the Clean Water Act.

A great deal remains to be done to meet the goals of the Clean Water Act. I think these goals are overwhelmingly supported by the American people as well as every level of Government. We must avoid the temptation to address the need for additional progress by enacting either case-by-case exemptions or case-by-case sanctions. This will tend to politicize the clean water program and take us away from the uniform national program which Congress realized is necessary for its success.

Although the Ferraro amendment does not delete the special sanction against New York City, it would at least remove the sanction if the city is in substantial compliance with its consent decree. It does not cure all of the defects of the existing section 30. At the same time it would still allow Congress to put the city on notice, even if such action is unwarranted. Such an approach ought to be acceptable to the sponsors of the original provision. I support the amendment as an improvement over what is currently contained in the bill.

Mr. GREEN. Mr. Chairman, will the gentleman yield?

Mr. SOLARZ. I yield to my friend from New York [Mr. Green].

Mr. GREEN. I think my colleague from New York [Mr. Solarz] has put his finger on what is a source of concern to us, that we are far from the only community which faces this problem. Yet this bill singles out New York City, even though I am told, there are even some communities in New Jersey that are dumping raw sewage.

And yet who is singled out? New York City. And that I think is the basic unfairness of the provision in the bill that this amendment seeks to rectify.

Looking at the situation from a broader prospective, I want to commend the Public Works and Transportation Committee, for bringing this important piece of legislation to the floor. As a cosponsor of the original H.R. 3282 and a committed advocate of clean water I wish to rise in support of the admirable provisions of this bill. I must, however, join my colleague from New York, Ms. Ferraro, in objecting to the particularly discriminatory provision of the bill, namely section 30. Section 30 clearly singles out the city of New York for a unique requirement. It would limit raw sewage discharges from the city to the 30-day average over the year preceding March 15, 1986, and thus impose sanctions against New York City, including the possibility of a sewer hookup moratorium.

This singling out of the city does not produce any environmental benefit. It will not cause plants to be built any faster than is currently occurring. At this point money and commitment are not the constraints. The only limitations on the pace of construction are the physical limitations of the site itself and the number of contractors that can work there at one time.

Ms. Ferraro's amendment directs the Environmental Protection Agency to waive this limitation if the city of New York is in substantial compliance with a Federal consent decree designed to eliminate sewage discharges by a date certain. New York City is currently operating under the terms of a consent decree calling for the elimination of raw discharges at the Red Hook treatment plant by May 1, 1987, and at the North River plant by May 1, 1986. Construction is proceeding in the fastest possible manner and the city is actually ahead of the consent decree schedule: North River will be ready by November 1985 and Red Hook by December 1986.

Uncertainty about section 30, the calculation of the ceiling imposed, and the consequences of violating it, will have a chilling effect on investment in the city for construction or real estate development almost immediately.

It is poor policy for Congress to get into the business of selective enforcement of our environmental laws by enacting special sanctions and requirements on a case-by-case basis. Singling out one city for punitive sanctions presents a bad precedent, one that could be used against almost any Congressional District in the county. I would, therefore, urge my colleagues to support Congresswoman Ferraro's amendment to waive this limitation if the city is in substantial compliance with a Federal consent decree.

Mr. SOLARZ. I yield back the balance of my time, Mr. Chairman.

Mr. ROE. Mr. Chairman, I move to strike the last word.

You know, we are trying our best for all of our distinguished colleagues in this bipartisan effort. And how could we be distressed with our beautiful people from New York any more than they could be with us from New Jersey?

I would ask those who are in this confrontation to think a minute about the amendment that is pending and I ask you indulgence, because I am not quite sure how to handle it.

The amendment goes as follows, one Member just gave to me, that maybe what we ought to be doing is, pardon the euphamism, putting some kind of a head tax on those coming from New Jersey who work in New York and those in New York who go to New Jersey and equate the situation out.

I would suggest the following to my Members: We have labored for 2 years on this bill, and the mark of effort was based upon the use, the position of equity and fairness.

Now let me just close on this point and I hope we can come to—I kind of like to see the amendment withdrawn because I think we are both in the same direction. There are three things to call to the Members' attention of the House; one is that through a great deal of effort we were able to get EPA to grant additional funds to New York City, we importuned EPA and they provided a $40 million additional bonus just recently to the city of New York and they made the following statement: "As a result, New York City estimates it may be able to achieve secondary treatment at North River as early as 2 years ahead of the court's approved schedule."

We have provided in this bill about a 35- to 40-percent increase in the funding available to each respective State in the Nation at great effort, which gives considerable added funding to New York to expedite its situation and we specifically provided for New York City a $250 million authorization with a 75-percent grandfather clause.

So that the committee and the House and EPA has done everything humanly possibly, 5 to 1 almost any other State.

So I would respectfully suggest that in view of the fact that there is so much other legislation and in view of the fact that we love New York and New York loves New Jersey, let us vote the thing or withdraw the amendment and be done with it now.

Mr. SCHUMER. Mr. Chairman, the Clean Water Act is one of the great environmental success stories of the last decade. We can be proud that the country is well on its way to achieving the fishable, swimmable waters, called for in the original act. The legislation before us today, with its increased Federal funding for construction of water treatment facilities and its new program for dealing with nonpoint source pollution should help us take those last few steps.

At least one aspect of the bill, however, seems to serve no environmental purpose. I refer to section 30, which would limit New York City's discharge of raw sewage beginning in March of 1986. Ostensibly, this provision would hasten the completion of the city's wastewater treatment facilities. The fact is, New York City is already well on its way to ending such discharges. The money has been allocated and the contractors hired, and construction is proceeding ahead of schedule on two huge new water treatment plants.

Why should New York City, which has spent more than $1.5 billion over the last 10 years to bring its sewage treatment plants into compliance with the act, be singled out? According to the EPA, New York City is one of 242 municipalities still discharging raw wastewater. Furthermore, the city's raw discharges in fact contain fewer pollutants than the treated discharges from four plants in New Jersey and the same levels as five others.

The penalties and sanctions stipulated in the act have proved themselves more than adequate in compelling municipalities to come into compliance with the act's requirements. New York City, by proceeding on an accelerated building program to bring the North River and Red Hook treatment plants into operation as soon as humanly possible, has proved its intentions to help clean up its surrounding waters. To invoke new sanctions is both unfair and a dangerous precedent. While it does not eliminate the problem, Ms. FERRARO's amendment at least recognizes that New York City is currently meeting the terms of a Federal consent decree and that, unless something totally unforeseen occurs in the next 2 years, the terms of that decree will be met ahead of schedule. I urge my colleagues to support this amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentlewoman from New York [Ms. FERRARO] to the amendment in the nature of a substitute offered by the gentleman from New Jersey [Mr. ROE].

The amendment to the amendment in the nature of a substitute was rejected.

AMENDMENT OFFERED BY MR. LEVITAS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ROE

Mr. LEVITAS. Mr. Chairman, I offer my amendment number 1 as an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. LEVITAS to the amendment in the nature of a substitute offered by Mr. ROE: At the end of the amendment add the following new section:

TURNKEY CONTRACTS

SEC. 58. Section 203 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(f)(1) After completion of an approved facility plan for a treatment works that has an estimated total cost of $8,000,000 or less (as determined by the Administrator), the applicant proposing to construct such treatment works may enter into an agreement with the Administrator under this subsection for the preparation of construction plans and specifications and the building and erection of such treatment works, in lieu of proceeding under the other provisions of this section.

"(2) An agreement entered into under this subsection shall—

"(A) set forth an amount agreed to by the Administrator and the applicant as the maximum Federal contribution to the project, based upon a determination of the federally eligible costs of the project at the applicable Federal share under section 202 of this Act;

"(B) set forth a date for completion of construction of the treatment works by the applicant and a schedule of payments by the Administrator of the Federal contribution to the project;

"(C) contain such assurances by the applicant as the Administrator may require that (i) the proposed treatment works will be an operable unit and will meet all the requirements of this title (except as otherwise provided in paragraph (3) of this subsection), and (ii) not later than one year after the date specified as the date for completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act; and

"(D) require the applicant and any agent or contractor of the applicant to provide a bond in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

"(E) contain such other terms and conditions as the Administrator deems necessary to ensure compliance with this title (except as provided in paragraph (3) of this subsection).

"(3) Sections 201(g)(3), 203 (other than this subsection and except with respect to the development and approval of a facility plan), 204(a)(5), 204(a)(6), and 204(d)(1) shall not apply to grants made pursuant to this subsection.

"(4)(A) Upon entering into an agreement under this subsection, the Administrator shall deposit, from amounts allotted to the

State for such fiscal year under section 205 of this Act, the amount of the Federal contribution to the project agreed upon by the Administrator and the applicant into an interest-bearing account. Such amount shall be available only for making payments to the grantee in accordance with the schedule contained in the agreement.

"(B) Interest earned on amounts in the account under subparagraph (A) shall be available for payments to the grantee. Such payments shall be made solely for the purpose of reducing the net interest costs incurred by the grantee on obligations issued by the grantee for construction of such treatment works. The amount of such payments shall be in addition to the Federal share of the project otherwise allowable. The amount of any such interest earned which exceeds the amount of such interest costs incurred shall be deposited in the general fund of the Treasury after the final audit of the project.

"(5) The Administrator shall reserve a portion of the amount in the account under paragraph (4)(A) until the final audit of the project. If the amount deposited into the account by the Administrator under paragraph (4)(A) exceeds the cost of preparing construction plans and specifications and the building and erection of the treatment works, the Administrator shall reallot the amount of the excess to the State in which such treatment works are located for the fiscal year in which such audit is completed.

"(6) The Administrator shall not obligate more than 20 percent of the amount allotted to a State for a fiscal year under section 205 of this Act for grants pursuant to this subsection.

"(7) In no event shall the Federal contribution for the cost of preparing construction plans and specifications and the building and erection of treatment works pursuant to this subsection exceed the amount agreed upon under paragraph (2), plus interest paid to the grantee under paragraph (4)(B).

"(8) In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (2), the Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.

"(9) A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.".

Mr. LEVITAS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

(Mr. LEVITAS asked and was given permission to revise and extend his remarks.)

Mr. LEVITAS. Thank you, Mr. Chairman.

Mr. Chairman, the purpose of this amendment is to assist smaller communities in meeting the law's cleanup requirements at less cost, and more expeditiously.

It is also intended to ensure there is no confusion as to who's responsibility it is to design and construct a treatment works, and exactly who will be accountable, and liable, for the project, particularly with respect to treatment works that all too frequently don't work properly.

This amendment will allow States to use up to 20 percent of their Construction Grants Program allocation each year for grants to communities that wish to pursue the design and construction portions of their treatment works projects by entering into a turnkey contract. This is a contract wherein the community hires one agent who will be responsible for the total design and construction of the treatment system, and after completing that project, when it has been determined that the project works properly, then that agent turns over the keys to the plant to the municipal government or treatment authority. Then, and only then, does the agent receive final payment.

According to various reports and testimony we have received during hearings held by the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation over the past several years, and according to reports by the U.S. General Accounting Office, this type of design-construct contract is very efficient and should significantly reduce the time delays and some of the cost increases that we have so frequently experienced in this program. It is a construction contracting method that also has been used for years for Europe, and that is often used here in this country by industry.

This provision also has a number of safeguards in it to protect the environment, and the public's investment.

It limits the size of the project to no more than $8 million in total costs, and it limits the Federal share to that which would normally be the case if the project were funded through the current program.

It also requires that the grant applicant have an approved facilities plan, step one, which is that part of the Construction Grants Program process wherein the law requires that alternative technologies, such as land use, be examined. This will also ensure that the law's requirements for considering the recreational and open space, and other multipurpose benefits, such as the potential for energy related savings, and resource recycling, will still be met.

It is only after all of these various requirements—including public participation in the planning of the treatment works, and approval of the final plan—have taken place that this alternative system for designing and constructing the works can be pursued.

Under the current program, a community must borrow the money it needs to construct a treatment works. Only after it has spent the money does it get reimbursed by the EPA. Consequently, a community can incur considerable interest costs during construction, costs which only add to the costs that the user must pay for years and years.

This provision would avoid much of that, by providing a predetermined schedule of payments to be worked out between the grantee and the Administrator of EPA. Once agreed, this provision calls for the EPA to place the Federal share of the project's costs in a bank account where it can earn interest until a payment is made. The interest can also be paid to the grantee, so long as the grantee uses this extra payment for reducing its interest costs during construction.

These two provisions of the amendment will lower the amount of funds a community has to borrow, and it will reduce the net interest costs a community must pay on those funds it must borrow to finance it own local share of the project's costs, which by the way, often exceeds 40 to 50 percent of the total costs when federally ineligible items are included.

I believe that this provision will benefit small communities. It will help these communities to comply with the law more quickly. It will reduce costs, and ensure that we obtain treatment plants that work—or that it is clear when a plant doesn't work, as to who is responsible, and who must be accountable for correcting the problems.

I believe that this provision will go a long way toward helping us meet our water quality goals.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I would be happy to yield to the gentleman from New Jersey.

Mr. ROE. The gentleman has done such an extraordinary job as chairman of our Oversight and Investigations Committee, I know he has done a great deal of work, particularly on this issue.

Mr. Chairman, we find the amendment on this side to be in complete order, an excellent amendment to our legislation, and I have no objection to accepting the gentleman's amendment.

Mr. STANGELAND. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. Be happy to yield to the gentleman from Minnesota.

Mr. STANGELAND. Mr. Chairman, we on this side have looked at the amendment and we think it makes a good contribution to the bill and have no objection and think the amendment should be adopted.

Mr. LEVITAS. I thank the chairman and the ranking member.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by Mr. LEVITAS to the amendment in the nature of a substitute offered by the gentleman from New Jersey (Mr. ROE).

The amendment to the amendment in the nature of a substitute was agreed to.

### AMENDMENT OFFERED BY MR. LEVITAS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ROE, AS AMENDED

Mr. LEVITAS. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute. This is my amendment No. 2.

The Clerk read as follows:

Amendment offered by Mr. LEVITAS to the amendment in the nature of a substitute offered by Mr. ROE, as amended: After section 13 of the amendment, insert the following:

### GRANTEE CERTIFICATION OF TREATMENT PROCESS

SEC. 14. Section 203(a) of the Federal Water Pollution Control Act is amended by inserting after the second sentence the following: "The approval of construction plans and specifications by the Administrator under this section shall not include a determination or approval of the treatment work's unit processes, or the configuration of the treatment work's unit processes, which constitute the treatment technology. The Administrator shall not approve plans, specifications, and estimates for a project under this section unless the applicant certifies that the proposed unit processes and treatment technology are capable of meeting the effluent limitations for which such process and technology are designed.".

Redesignate succeeding sections accordingly.

Mr. LEVITAS (during the reading). Mr. Chairman, I ask unanimous consent the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

(Mr. LEVITAS asked and was given permission to revise and extend his remarks.)

Mr. LEVITAS. Mr. Chairman, in 1981, the Subcommittee on Investigations and Oversight of the Public Works Committee held extensive hearings on the accountability of those involved in the design and construction of wastewater treatment grant projects for the performance of the final product. The subcommittee's inquiry showed, in the words of the General Accounting Office, that—

> The question of accountability and/or responsibility for fixing wastewater treatment plants that have seldom or never performed as efficiently as they were designed to be, is a tangled web of charges, counter-charges, inuendos, and fingerpointing by the various parties involved in plant construction.

The 1981 amendments to the clean water law focused on the Construction Grants Program, and attempted to address this problem, at least in part, by requiring that "* * * the engineer or engineering firm supervising construction or providing architect services during construction shall continue its relationship to the grant applicant for a period of 1 year after the completion of construction and initial operation of such treatment works."—Section 204(d)(1). That specific provision went on to note that at the end of the 1-year period, the "owner and operator of such treatment works shall certify to the Administrator whether or not such treatment works meet the design specifications and effluent limitations contained in the grant agreement and permit * * * for such works." The 1981 provisions also requires that, if the treatment works does not meet its required level of performance, corrections must be made "at other than Federal expense."

The 1981 provision attempts to ensure that grantee's fulfill their responsibilities by taking adequate corrective action where necessary to realize the full capabilities of a grant project. But it stops short, doing little to clear up the numerous factors that contribute to the performance problem in the first place, and to the overlapping and ambiguous lines of responsibility and accountability between all of those involved in the typical grant project.

Consequently, while the community may now have the burden of having to correct any problems it experiences with a wastewater treatment grant project at other than Federal expense, it nonetheless will still face the dilemma of trying to determine just who was responsible for what, and who is liable financially for correcting any problems.

The subcommittee's review has shown that this accountability/responsibility problem stems from the fact that Federal and State officials often involve themselves, both formally and informally, in influencing the nature of the design or process technology to be used in a treatment works, rather than limiting their review to the more traditional areas of the biddability of a project's plans and specifications, and the buildability of whatever it is that was designed.

For these reasons, the subcommittee, in its October 1981 report recommended that—

> The statute should require Federal and State review of plans and specifications only to the extent of "buildability and biddability," thus focusing responsibility on the grantee community and its design engineer.

Under the scope of review envisioned by this amendment today, project plans and specifications would be examined in terms of mechanical engineering, their electrical engineering, and their structural engineering. And they would also be reviewed in terms of normal construction standards and for the completeness and adequacy of the project's specification as the basis for a contractor's bid. But they would not be reviewed by EPA with respect to the specific nature of the individual unit process technology, or the configuration of that technology; those are process design factors, and they should be left to the grantee or, as is the case in most instances, the grantee's design engineer.

This approach would eliminate Government agency involvement in "process" design, leaving the design engineer with that responsibility, as he is normally licensed and required to do, and indeed more appropriately qualified to do. It would, however, retain primary responsibility for reviewing the adquacy and integrity of the structual and physical design of a project with the Government, which is traditionally one of the latter's more appropriate roles.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I would be happy to yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, again I find this amendment to be in complete order and, as a result of the distinguished gentleman from Georgia's excellent work in the Investigative and Oversight review of this legislation, on this side we have no objection to the amendment.

Mr. STANGELAND. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I would be happy to yield to the gentleman from Minnesota.

Mr. STANGELAND. I thank the gentleman for yielding.

(Mr. STANGELAND asked and was given permission to revise and extend his remarks.)

Mr. STANGELAND. Mr. Chairman, I rise in support of the gentleman's amendment, which provides that the approval by the Administrator of Construction Plans for a publicly owned treatment works shall not include approval of the proposed treatment works unit processes or the proposed configuration of those processes, and which requires applicant certification that the proposed treatment technology and processes are capable of meeting effluent limitation design parameters. The General Accounting Office and others have criticized the Construction Grants Program on certain occasions because of allegedly low municipality compliance with the requirements of the act. Where these problems exist there are usually a variety of reasons.

One reason, however, is often that there exists confusion about who is responsible and to what extent when a treatment plant is built and fails to operate as envisioned when the facility plan was approved. Grantees often assert that, because EPA had approved the facility plan prior to the plant's construction, the Agency had somehow warranted the plant's future performance and, when that performance was not achieved, shared in the responsibility for the failure.

This amendment is designed, as I understand it, to clarify that under circumstances such as these, responsibility for design deficiencies and improper POTW performance will rest with the grantee and/or the grantee's consultant engineers and not with EPA. The amendment is intended to strengthen accountability under the act and I strongly support it.

Mr. LEVITAS. I thank the gentleman from Minnesota.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Georgia [Mr. LEVITAS] to the amendment in the nature of a substitute offered by the gentleman from New Jersey [Mr. ROE], as amended.

The amendment to the amendment in the nature of a substitute, as amended, was agreed to.

AMENDMENT OFFERED BY MR. LEVITAS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ROE, AS AMENDED

Mr. LEVITAS. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute. This is my amendment designated No. 3.

The Clerk read as follows:

Amendment offered by Mr. LEVITAS to the amendment in the nature of a substitute offered by Mr. ROE, as amended: In subsection (1) of section 205 of the Federal Water Pollution Control Act, as proposed to be added by subsection (f) of section 16 of the amendment, insert before the closing quotation marks the following:

Such sums shall be in addition to, and not in lieu of, any sums otherwise appropriated for or allocated to the Office of the Inspector General.

Mr. LEVITAS (during the reading). Mr. Chairman, I ask unanimous consent the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

Mr. LEVITAS. I thank the Chairman.

This amendment simply assures that the one-quarter of 1 percent set-aside for the Inspector General cannot be made subject to a shell game and that they will get one-half of 1 percent.

Mr. ROE. If the gentleman will yield, a quarter percent.

Mr. LEVITAS. Quarter percent, and it will not be shuffled around from some other program.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I would be happy to yield to the gentleman from New Jersey.

Mr. ROE. Mr. Chairman, we accept this amendment because what this amendment does is simply guarantees, as the gentleman pointed out, that the Department will not cut the funds from the auditing section. We agree with the amendment. It is in order.

Mr. STANGELAND. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I would be happy to yield to the gentleman from Minnesota.

Mr. STANGELAND. I thank the gentleman for yielding.

(Mr. STANGELAND asked and was given permission to revise and extend his remarks.)

Mr. STANGELAND. Mr. Chairman, I rise in support of the gentleman's amendment which would provide that the one-quarter of 1 percent set-aside for the Inspector General contained in the bill would be in addition to and not in lieu of other funding for the Inspector General. This amendment is really technical in nature since it was always our intention that the set-aside called for in the bill would provide additional funds for EPA's IG and would not be an excuse for OMB or others to reduce funding for this important purpose from other sources.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Georgia [Mr. LEVITAS] to the amendment in the nature of a substitute offered by the gentleman from New Jersey [Mr. ROE] as amended.

The amendment to the amendment in the nature of a substitute, as amended, was agreed to.

Mr. OBERSTAR. Mr. Chairman, I move to strike the requisite number of words.

(Mr. OBERSTAR asked and was given permission to revise and extend his remarks.)

Mr. OBERSTAR. Mr. Chairman, I rise in support of the amendment in the nature of a substitute to H.R. 3282, the Clean Water Renewal Act. This is a strong and effective bill now that the committee has made the revisions that are included in this committee substitute.

It is a clear restatement of clean water policy on the part of the Committee on Public Works and Transportation and I would call it a reaffirmation of our 30-year national commitment to cleaning up the Nation's waterways.

I particularly want to commend the gentleman from New Jersey [Mr. ROE] and the gentleman from New Jersey [Mr. HOWARD], for spending many hours not only in the hearings that were conducted by the subcommittee, but prior to the markup, during the markup and afterward. After the committee had reported out a much different bill than the pending substitute, both Mr. HOWARD and Mr. ROE spent additional time to redress some grievances that were called to the committee's attention by some of us on the committee and many in the environmental community who saw certain shortcomings and flaws in the bill as reported, in some respects, a retreat from the strong clean water program we anticipated in this bill, and a retreat from current law, in some provisions of the reported bill.

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To the great credit of the chairman of the full committee, the gentleman from New Jersey [Mr. HOWARD], and the chairman of the subcommittee, the gentleman from New Jersey [Mr. ROE], these problems have been corrected. We now have before us a bill that is environmentally sound.

I would like to commend our colleagues on the minority side, the gentleman from Kentucky [Mr. SNYDER] and the gentleman from Minnesota [Mr. STANGELAND] for participating in that effort to bring forth what is a truly sound and responsible progressive, forward looking piece of legislation. But without the changes, without the amendments in eight key particulars which were designated earlier by the chairman of the subcommittee, I would have found it necessary to offer an amendment in the nature of a substitute which would have cured those problems.

That is not necessary now. This bill is a very progressive piece of legislation in the tradition of our strong commitment to clean water. I am honored to have played a role in shaping this substitute.

Mr. Chairman, the committee substitute is in that tradition; it is a bill of which the House can be proud. It contains major advances in toxics control, fulfills the commitment made in 1972 to control municipal wastes, adds a major, innovative loan program for municipal treatment plant construction, provides substantially increased funding for the Clean Lakes Program, and contains a nonpoint source control implementation program. I urge my colleagues to support the committee substitute.

I also commend the various environmental groups who worked long hours, over many days and nights, with us: the Clean Water Action Project, the Environmental Policy Institute, the Friends of the Earth, the Izaak Walton League of America, the League of Women Voters, the National Audubon Society, the National Wildlife Federation, the Natural Resources Defense Council, and the Sierra Club.

Mr. Chairman, while I support the entire bill, I would like to speak particularly to the provision which adds a new section 319, Nonpoint Source Control Implementation Programs, to the Clean Water Act. I originally introduced this section as H.R. 4037, and worked with a broad range of interested groups and individuals both before and after hearings to develop the final language.

Sec. 8 of the committee amendment adds a new section 319 which establishes a voluntary program to encourage States to develop and implement control programs for nonpoint sources of pollution. This is to be an implementation program, not a planning program, using existing data where applicable, and building on programs, best management practices [BMP's] and other measures where they are already being implemented. No new planning funds are provided.

The intent of this program is not only to reduce nonpoint sources of pollution, but to improve water quality.

While this first phase of the program is voluntary in nature, section 319 does not preclude regulatory programs at the State level. Many States already have such programs for certain categories of sources, and enforcement is included as an eligible implementation activity. However, I am convinced that, during these first 4 years, the dections to implement a regulatory program should be made at the State rather tah at the Federal level.

Each State is required, first, to submit to EPA a report which identifies streams not meeting applicable water quality standards or the goals and requirements of the act because of nonpoint sources; which identifies categories, such as agricultural, silvicultural, urban, construction, and mining, and their subcategories, of nonpoint sources; identifies existing State and local nonpoint source control programs; and describes the process for identifying best management practices [BMP's] and other control measures. This information is to be based on existing information where available and adequate, including that collected under other provisions of the act, and on water quality management plans approved under section 208 or 303 of the act.

Each State is also required to submit to EPA a plan which the State intends to implement over the next 4 years. This plan must specify those significantly affected streams the State will address; the order and schedule for implementation; the categories and subcategories of sources to be included in the implementation plan; the best management practices and other measures to be used; other methods including but not limited to demonstration programs, enforcement, technical assistance, education, training, and cost sharing; sources of funding other than this program; and the estimated cost of the total implementation program.

The purpose of the plan is to inform

the Administrator of precisely what the State intends to implement, when, and where. States need not address all their significantly impacted waters during these first 4 years. Rather, they should concentrate on those for which they have the resources to achieve real gains in pollution control and water quality improvement. However, initial implementation must concentrate on the most serious problem waters.

Section 319 does not set fixed implementation dates; the State is the proper entity to determine which dates it believes it can attain. However, the schedule must establish an expeditious time period for implementation of BMP's and other measures for each category and subcategory, and must indicate the estimated dates by which these practices and measures will be implemented. Expedition is a condition for initial approval of the plan, and the State's progress in attaining those goals is a condition of continued funding. The State must submit an annual report describing its activities and progress made in meeting its schedule during the preceding year. No grant for the coming fiscal year may be made unless the Administrator determines the State's progress has been satisfactory during the past year.

The State must also address the major sources of nonpoint pollution. The plan should therefore indicate to the Administrator the relative contributions of each category and subcategory to the overall nonpoint source problem.

The State need not include in its plan all the methods enumerated in the bill. However, implementation of BMP's is required.

Cost sharing is a necessary tool to encourage implementation of BMP's. However, the limited resources authorized in the bill preclude widespread use of cost sharing. This should be used very sparingly, and only when absolutely necessary to assure critically needed compliance where these costs would otherwise be beyond the individual farmer's means. Demonstration programs and other methods with wider spread application should be the predominant choices by the States.

To the maximum extent practicable, plans should be developed and implemented on a watershed-by-watershed basis.

In the development and implementation of their plans, States should, to the maximum extent practicable, utilize local agencies and organizations with expertise in nonpoint source controls, such as conservation districts, watershed districts, and public comprehensive planning organizations.

Because of the short timeframe between enactment of this bill and the final report to be issued by EPA in January 1988, States are required to submit both the report and the plan within 270 days of enactment. However, we don't want to close the door on States which may not be able to complete the requirements within the first 9 months. Therefore, States may request, and EPA must grant, an extension of up to 9 additional months to permit as many States as possible to participate in the program.

EPA is to examine the State's plan against the data submitted under the report and against the goals and requirements of the act. EPA must make a final decision on the plan and report within 6 months, or they are automatically approved. EPA may disapprove the plan or portion of it if it is unlikely to satisfy the goals and requirements of the act; if the State's authority or resources are not adequate; if the implementation schedule is not sufficiently expeditious; or if the plan is not adequate to improve water quality or reduce nonpoint source pollution.

All States are required to participate. However, if a State does not choose to do so, or if its plan is not approved, the bill provides that EPA develop the information required in the report for waters not meeting water quality standards or the goals and requirements of the act, and categories and subcategories of sources, in order to assure a nationally consistent data base. There is no implementation provision in the report.

In order to achieve the maximum implementation nationwide, section 319 provides that, if a State does not participate, or if its plan is not approved, a local public agency or organization may, with the approval of its State, develop and implement a plan for its area. Such a local organization must have expertise in, and authority to, control nonpoint source pollution in its area, and must be of sufficient geographic size to implement an effective program. It may request technical assistance from EPA in developing its plan, and if the plan is approved the local organization may receive funding and implement its plan in the same manner as if it were a State.

There is some concern that other Federal and State programs and activites may at times work at cross purposes with the State's efforts to control nonpoint source pollution. Accordingly, the States are to identify Federal and State programs which are inconsistent with their plans, and recommend changes which could be made to make them consistent, and assist with implementation. EPA is to consolidate the States recommendations, and forward them to the appropriate agencies. Each agency must then consider these recommendations, and, to the maximum extent practicable and consistent with existing law, accommodate those recommendations and carry out its own programs and activities in a way which will be consistent with, and assist implementation of, the plans.

Section 319 provides further incentives to consistency by referencing this section in section 304(k) of the act, which authorizes EPA to enter into agreements with other Federal agencies to provide for the maximum utilization of other Federal laws and programs in controlling nonpoint sources of pollution. While I understand that EPA has begun negotiations with the Department of Agriculture, I encourage the Agency to open discussions with other agencies, including the Office of Surface Mining, Reclamation and Enforcement in the Department of the Interior.

Section 319 establishes a mechanism for reconciling pollution of one State's waters by another State. At the request of a downstream State with an approved plan, or at the initiation of EPA, an interstate management conference of all States contributing nonpoint source pollution to the water body shall be convened, in a case where the water body is not meeting water quality standards or the goals and requirements of the act. Upstream States would be required either to implement or to revise their plans to address the interstate water body, but the choice of BMP's and other implementing measures is made by each individual State. There is no provision in the bill for another State or the conference to impose specific measures on any State. Each State must implement its revised plan.

Management conferences or compacts already exist for many interstate water bodies. Where appropriate, EPA should consider using these existing bodies for this purpose as well.

Section 319 authorizes $150 million per year through 1989, and provides for up to a 50-percent Federal match for costs incurred by the States. However, the Federal share could rise to 60 percent where the Administrator determines that a significant number of non-Federal, non-State interests in a watershed area agree to participate. The Administrator is provided the flexibility to determine when a "significant number" of participants has joined the program.

The application should contain, in detail specific to each watershed, information similar to that required for the plan: that is, it should provide, at the project level, for the year for which the funds are requested, an identification of the stream segments to be addressed, the specific pollutants involved, and the sources of pollution. It should lay out the strategy for controlling these sources, including BMP's and other measures, together with a schedule of activities to be undertaken, and a discussion of other activities of Federal and State agencies cooperating in the effort.

Section 319 contains no formula for allocations to States; rather, each State is encouraged to apply for as much assistance as it is able to match, although a cap of 15 percent of the appropriation per State is established.

The section requires EPA to report annually to the House Committee on Public Works and Transportation, and to the Senate Committee on Environment and Public Works, on the preceding year's programs and activities, and the progress made in reducing nonpoint source pollution.

A final report is required on January 1, 1988, on the activities carried out under this program. While improved water quality is the ultimate goal of this program, such improvements may take longer than 4 years to be fully measured and documented. Therefore, the final report should give full attention to the effectiveness of the plans, BMP's, and other measures in controlling nonpoint sources of pollution, and provide an analysis of the effectiveness of a voluntary program. The recommendations should include a determination of whether this voluntary approach should be continued, or whether the Congress should consider a regulatory and enforceable approach in the next phase of the program.

Complementing this nonpoint source control program for navigable waters is section 54 of the substitute, which provides $7.5 million per year, on a voluntary basis, for ground water protection activities which assist States in moving toward a comprehensive surface and ground waters nonpoint source protection program. Some States may not have the necessary information on ground water for such a comprehensive program now. Therefore, section 54 provides additional funding, on request by States with approved programs under section 319, of up to $150,000 per State per year on a 50-50 matching basis, for research, planning, ground water assessments, demonstrations, enforcement, technical assistance, education, training, and other activities aimed at protecting ground water quality from nonpoint sources of pollution.

Mr. Chairman, in closing I again commend the Public Works and Transportation Committee and especially our leadership, chairman of the full committee, Mr. **Howard**, and chairman of the subcommittee, Mr. **Roe**, for their support of these programs, and for their firm commitment to water pollution control and strong environmental protection. I urge my colleagues to support the committee's amendment in the nature of a substitute to H.R. 3282.

### AMENDMENT OFFERED BY MR. MOLINARI TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ROE, AS AMENDED

Mr. MOLINARI. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. MOLINARI to the amendment in the nature of a substitute offered by Mr. ROE, as amended: At the end of the amendment add the following:

SEC. 58. For purposes of the Federal Water Pollution Control Act, the term "point source" includes a leachate collection system.

Mr. MOLINARI (during the reading). Mr Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. MOLINARI. Mr. Chairman, this amendment is designed to help solve the pressing problem of leachate discharges into our surface waters. Everyday, our efforts aimed at improving our water quality are curtailed by these discharges.

In fact, EPA has published a report listing some 400 landfill sites as having degraded surface water quality stemming from leachate discharges. It is apparent that leachate contamination of surface waters is a subject that must be addressed.

In my district alone, 4 million gallons of leachate is collected and channeled daily into the water that separates New York from New Jersey. This discharge which comes from the largest sanitary landfill in the world, degrades water quality. It adversely effects my district, as well as Mr. HOWARD's, and Mr. ROE's. In fact it has a major effect upon water quality within the entire New York Bight apex area.

I attempted to control this discharge by asking the EPA to require a discharge permit for the leachate collection system from the city of New York. EPA refused on the grounds that the landfill leachate was not considered a point source, and therefore, did not require a discharge permit.

In my mind, the definition of point source in the Clean Water Act is clearly stated. The act states that if there is a definable, discrete means of discharging a pollutant, it is a point source. Thus, any system designed to collect and direct the outpouring of leachate from a landfill into the surface waters should clearly fall within that definition.

However, this has not been the case. Therefore, this amendment is necessary to clarify existing law by specifying that a leachate collection system is a point source discharge.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. MOLINARI. I yield to the gentleman from New Jersey.

Mr. ROE. I thank the gentleman for yielding.

Mr. Chairman, we have reviewed this distinguished gentleman's amendment on our side. In fact, it happens to be one of the outstanding amendments that has been offered here today, certainly between our two great States. We would have no objection to the adoption of the ordinance on our side.

Mr. MOLINARI. Mr. Chairman, I thank the gentleman.

Mr. STANGELAND. Mr. Chairman, will the gentleman yield?

Mr. MOLINARI. I yield to the gentleman from Minnesota.

Mr. STANGELAND. I thank the gentleman for yielding.

Mr. Chairman, we support the gentleman's amendment believing it to be a technical amendment to correct a misinterpretation which has been made in region 2 and to clarify that leachate collection systems are point sources for purposes of the Federal Water Pollution Control Act. We urge the amendment's adoption.

Mr. MOLINARI. Mr. Chairman, I thank the gentleman.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from New York [Mr. MOLINARI] to the amendment in the nature of a substitute offered by the gentleman from New Jersey [Mr. ROE], as amended.

The amendment to the amendment in the nature of a substitute, as amended, was agreed to.

### AMENDMENT OFFERED BY MR. MINETA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ROE, AS AMENDED

Mr. MINETA. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. MINETA to the amendment in the nature of a substitute offered by Mr. ROE, as amended: After section 20 of the amendment, insert the following:

TEST PROCEDURES

SEC. 21. Section 304(h) of the Federal Water Pollution Control Act is amended by striking out ", within one hundred and eighty days from the date of enactment of this title," and inserting in lieu thereof ", within ninety days from the date of enactment of the Water Quality Renewal Act of 1984,".

Redesignate succeeding sections accordingly.

(Mr. MINETA asked and was given permission to revise and extend his remarks.)

Mr. MINETA. Mr. Chairman, when Congress enacted the Federal Water Pollution Control Act Amendments of 1972, it adopted a law that envisioned a tough and substantive national enforcement program. The foundation of that enforcement program was to be the development of various effluent limitations or cleanup standards that, once developed and issued by the EPA were to be complied with by industry.

In 1977, Congress shifted the emphasis of the act to the abatement of toxic pollutant discharges. Significant among these amendment were requirements, for the EPA to develop and implement effluent guidelines for both direct and indirect dischargers. These effluent guidelines were to address an enumerated list of toxic pollutants.

And, in order to provide a mechanism for monitoring compliance with these requirements, the law provided the EPA Administrator with the authority to require each discharger to report, monthly if need be, on the results of each discharger's efforts to remove or reduce the toxic and other chemicals that they had been previously discharging into our Nation's waters. This is the law's self-monitoring system.

The EPA is now close to completing its promulgation of the effluent guidelines. But the EPA has not done its job with respect to the promulgating testing methods, and in particular, has not promulgated analytical methods for toxic pollutants which are addressed by its effluent for guidelines. While it proposed analytical methods for toxic pollutants in December of 1979, it has not completed that rulemaking process. This has left the regulated community in great uncertainty as to what analytical methods should be used.

My amendment would emphasize that Congress expects the EPA to complete its rulemaking process promptly so that dischargers may be required to provide reliable and consistent data on the content of their effluent. My amendment would not change the substance of any current or forthcoming effluent limitations or analytical methods.

This amendment will ensure that we have in place a self-monitoring system that is fundamental to our ability to know that we are achieving substantive compliance with the law; that we are achieving our cleanup goals and objectives; and that we are cleaning up and protecting the quality of our Nation's waters for ourselves and for future generations.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I am more than pleased to yield to our fine distinguished colleague, the gentleman from New Jersey.

Mr. ROE. I thank the distinguished gentleman from California for yielding.

Mr. Chairman, we have reviewed the gentleman's amendment, and it is an important addition and improvement to our legislation. We have no objection to its adoption on this side.

Mr. MINETA. Mr. Chairman, I thank the gentleman.

Mr. STANGELAND. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I yield to the gentleman from Minnesota.

(Mr. STANGELAND asked and was given permission to revise and extend his remarks.)

Mr. STANGELAND. I thank the gentleman for yielding.

Mr. Chairman, we too, support this amendment. I think it contributes greatly to the overall bill.

Mr. Chairman, I rise in support of the amendment of the gentleman from California [Mr. MINETA]. His amendment will assure that guidelines on testing methods will be published by EPA.

Section 304(h) of the Act requires EPA to publish guidelines on testing methods for use in developing and monitoring effluent requirements. At the time of the 1977 amendments, some 76 of the pollutants had no such known methodologies. They have had to be developed since that time. EPA has not published most of these. It is important to those who must monitor their effluent to ensure compliance that this information is available.

Mr. Chairman, the gentleman's amendment merely requires that these test method guidelines will be published in a timely fashion. It is a good amendment and I urge all my colleagues to vote in support of it.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from California [Mr. MINETA] to the amendment in the nature of a substitute offered by the gentleman from New Jersey [Mr. ROE], as amended.

The amendment to the amendment in the nature of a substitute as amended was agreed to.

Mr. DAUB. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I will not take the full amount of my time.

I want to thank our chairman, our ranking members, and my colleagues on the committee for the outstanding work that they have done in arriving at truly a bipartisan compromise on H.R. 3282.

Of significance are the compliments that have been paid as well to the staff of the majority and minority who have worked so hard with the environmental organizations who have been so interested in crafting a better bill, and indeed, I do rise in support of this effort. Their work has brought us a compromise in a substitute that I can support. Their hard fought and diligent efforts have been unparalleled and it is a pleasure for me to take part in the process now of refining that legislation.

Let me indicate my support for the final product, and at the same time, point out a particular interest that I have in a new avenue that we have taken in this legislation. It is in the area of nonpoint source pollution.

In previous clean water legislation, we have dealt only with point source pollution in which a specific source could be identified as a discharger or emitter. Not only is this kind of effort one that I am glad to see in the current legislation, but I want to point out that the work of my colleague, the gentleman from Minnesota [Mr. OBERSTAR] is creative. The work he has done, essentially in my view, creates a program based on incentive rather than regulation. It is truly appreciated. I want to commend him for his fine efforts in that regard.

I also want to thank my colleague from Minnesota, as well as the committee, for the assistance that I received in the committee when they adopted an amendment that I offered to enhance the effectiveness of nonpoint source pollution in that section of the bill. My amendment was styled after a provision embodied in soil conservation legislation that I introduced recently, which encourages a regional approach to solving soil erosion problems.

The amendment simply would offer States up to an additional 10 percent in funding if they can encourage a significant number of interests in a watershed area to implement nonpoint source pollution control programs.

I would like, however, at this same time to bring up one of the reservations that I have about this bill as we move into this new territory in addressing nonpoint source pollution.

Most who are familiar with this type of pollution realize that it occurs in rural agricultural areas. Unfortunately, not everyone is familiar with the type of risk and investment that farmers take, and this subject is particularly relevant during this time of unusually high economic stress in our agricultural sector.

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As well, most do not realize that farmers' costs are fixed, and they are further subjected to widely varying returns on their investment. I bring all this to my colleagues' attention because they are factors which must be taken into consideration when discussing remedies for nonpoint source pollution. While the provisions of H.R. 3282 as it stands should not adversely impact on farmers, we need to keep in mind that Federal nonpoint source pollution action of a regulatory nature could have dire consequences on those in agriculture, when one begins to discuss the costs involved in cleaning up contaminated ground water, for example, and who would be held responsible for such costs.

Thus, in believing that we must proceed cautiously in our approach to nonpoint source pollution, I felt it important to bring this concern to the attention of my colleagues.

Nonetheless, I lend my qualified support to the direction that we have taken in addressing nonpoint source pollution in this legislation, and once again I want to thank my colleagues for their diligence in this matter, as well as commend the chairman, Mr. HOWARD, my subcommittee chairman, Mr. ROE, and the ranking members, Mr. SNYDER and Mr. STANGELAND, for the unique cooperation and perseverance fostered which allowed us such a compromise that has been achieved in consideration today of H.R. 3282.

Mr. RAHALL. Mr. Chairman, I move to strike the requisite number of words.

(Mr. RAHALL asked and was given permission to revise and extend his remarks.)

Mr. RAHALL. Mr. Chairman, as a member of the Committee on Public Works and Transportation, I rise in support of the amendment in the nature of a substitute to H.R. 3282 being offered by the committee.

A provision of this substitute which amends section 19 of the bill as reported by the committee is of great interest to those with a concern for the environment in the coal mining regions of this Nation.

As the author of this provision, I am pleased to say that it is aimed at giving the coal industry an incentive to remine and reclaim abandoned coal mine lands.

The provision of H.R. 3282 as reported, which is being substituted today, while well-intended, was subject to misinterpretation by several interest groups. The new language for this provision, however, has been agreed to by all those with an interest in this issue.

Today, there are in excess of 1 million acres of abandoned coal mine lands with the vast majority located in the Appalachian region. While the Surface Mining Control and Reclamation Act of 1977 created an abandoned mine reclamation program to address the problems created by coal mines left in an orphaned state prior to enactment of the 1977 statute, it is expected that this program—funded by a tax assessed on the coal industry—will resolve only about 20 percent of the problem areas.

As such, from a water quality perspective, many of these abandoned mine lands are currently discharging pollutants and will continue to do so into eternity unless the coal industry can be enticed into remining, and as such, reclaim, these areas.

Industry in many instances has not

been prone to remine abandoned coal mine sites because it would then become liable for treating the preexisting discharges. Treating these discharges are often technically or economically infeasible, especially for small coal operators.

The provision on remining being offered today is intended to provide the incentive the industry needs to remine and reclaim abandoned coal mine sites.

Under the substitute provision which I have authored and which is being offered by the committee to section 19 of H.R. 3282, the Administrator, or a State which has permitting authority under section 402(b), may issue a NPDES permit which modifies section 301(b)(2)(A) requirements for the coal mining industry for the level of pH in any discharge and for discharges of iron and manganese in situations where a coal operator intends to remine an abandoned coal mine site.

The coal operator would, however, have to apply best available technology economically achievable on a case-by-case basis, using best professional judgment as well as practices required by the Surface Mining Control and Reclamation Act of 1977. This requirement would replace the BAT and BCT requirements contained in the national guidelines for the specified discharges. It must be noted that within this context we are not applying the national standards as defined by section 301(b)(2)(A) of the Federal Water Pollution Control Act, but rather, a case-by-case application through the use of best professional judgment. It is intended that through the use of best professional judgment, an incentive will be provided to the applicant to remine abandoned coal mine sites.

The permit applicant would have to demonstrate to the Administrator or the State, as the case may be, that the coal remining operation provides a potential for improvement to water quality. It is expected the applicant would indicate how the reclamation of the site after the completion of the remining activity should improve water quality over that existing prior to the remining activity.

In addition, the provision requires that the level of pH in any discharge and discharges of iron and manganese do not exceed the levels being discharged from the site before the coal remining operation began.

The guiding consideration behind this provision of H.R. 3282 is that its implementation provide an incentive for the coal industry to remine abandoned coal mine lands. Obviously, for situations in the coal industry not addressed by this amendment, the applicable BAT and BCT standards would apply.

I would at this point yield to the distinguished chairman of the Committee on Interior and Insular Affairs, the gentleman from Arizona [Mr. UDALL] for the purpose of entering into a colloquy.

(Mr. UDALL asked and was given permission to revise and extend his remarks.)

Mr. UDALL. I thank the gentleman for yielding.

First, I would like to take this opportunity to thank the gentleman from West Virginia for his hard and diligent work on this matter. It has been apparent to me ever since we started wrestling with the strip mining question a decade ago that the only way to clean up all the abandoned mine lands in this country was to encourage the remining of as may of those lands as we safely could. It also has become apparent that some standards coal operators are required to meet unnecessarily impeded remining and its potential for extensive environmental improvement. The gentleman from West Virginia has taken the initiative to tackle this exceptionally difficult problem of devising a water quality formula that would be both flexible for the operator yet tough enough to ensure real gains in environmental health. He has worked hard on this and done a remarkable job and I wish to compliment him.

It is my understanding that in no event would the amendment diminish the authority of the Interior Department to implement the Surface Mining Control and Reclamation Act of 1977. Is this your understanding?

Mr. RAHALL. Yes, the gentleman is correct.

Mr. UDALL. To further establish the legislative history, the Surface Mining Control and Reclamation Act of 1977 provides that coal operators must minimize disturbances to the prevailing hydrologic balance by among other things, preventing or removing water from contact with toxic deposits and by treating drainage to reduce toxic content. Would these provisions be affected by the amendment?

Mr. RAHALL. I would say to the distinguished Chairman of the Interior Committee, no, they would not be.

Mr. UDALL. I am concerned that some operators may draw their permit areas to avoid preexisting acid discharges during a remining operation. Such a practice would leave unmined coal reserves. As the gentleman knows, section 515(b)(1) of the Surface Mining Control and Reclamation Act of 1977 requires that a coal operator maximize coal recovery so that the land would not have to be reaffected in the future. Do you agree that this requirement would be applicable to situations addressed by your amendment?

Mr. RAHALL. I am in complete agreement with the gentleman. I would say once again that in no way does this amendment affect provisions of the Surface Mining Control and Reclamation Act of 1977 or the regulations to implement that act.

And as the gentleman knows, I served with him on the conference committee that enacted that law, and this is in no way an attempt to circumvent that 1977 law.

Mr. UDALL. I thank the gentleman, and I ask, finally, if the amendment affects a State's authority to set and apply water quality standards?

Mr. RAHALL. The amendment does not amend any section of the Federal Water Pollution Control Act nor does it deal with that authority.

Mr. UDALL. I thank the gentleman, and I congratulate him on a fine job.

Mr. RAHALL. I thank the chairman for his remarks and for his concerns with respect to how this provision relates to the Surface Mining Control and Reclamation Act of 1977, a matter that is completely within the jurisdiction of his committee. The gentleman from Arizona has long held a great interest in the surface coal mining industry and recognizes the need for the incentive to remine abandoned coal mine lands provided by this legislation.

I would like to once again express my appreciation to the distinguished chairman of the full committee, the gentleman from New Jersey [Mr. HOWARD], and the ranking minority member, the gentleman from Kentucky [Mr. SNYDER], for their valiant efforts in regard to this legislation also.

Mr. Chairman, I yield to the gentleman from Pennsylvania [Mr. CLINGER].

Mr. CLINGER. I thank the gentleman for yielding, and I would just like to commend him for his work in this very important area, and I am pleased to have been able to join with you in working on this amendment.

In my State of Pennsylvania, the regulatory authority estimates that $75 million in reclamation per year will be done by the private sector as a result of this amendment.

So it is my understanding that under this provision programs such as the one proposed by Pennsylvania's General Assembly—which, incidentally, has the support of both the coal mining industry and the environmental community—would be an acceptable program. Is that the understanding of the gentleman from West Virginia?

Mr. RAHALL. Yes; that is my understanding.

Mr. CLINGER. I thank the gentleman very much for yielding, and I again commend him for his work on this very vital issue.

Mr. RAHALL. I thank the gentleman for his comments.

Before I conclude, Mr. Chairman, if I might ask the chairman of the subcommittee, Mr. ROE, to enter into a colloquy with me in regard to the collector sewage system in this bill, Mr. Chairman, as you are well aware, the 1981 amendments to the construction grants program eliminated from grant eligibility problems associated with combined sewer overflows, replacement and rehabilitation and construction and repair of collector sewers. This was tempered by a provision which allowed grants to be made for these otherwise ineligible categories in an amount not to exceed 20 percent of a State's allotment as determined by the Governor.

The committee amendment in the nature of a substitute would reinstate grant eligibility for collector sewer systems. However, while the bill as reported by the committee would also reinstate collector sewers, the substitute would delete the provision of this bill.

I would ask the distinguished subcommittee chairman, does the action of the committee have any reflection on the importance of collector sewer systems and especially to rural parts of our Nation?

The CHAIRMAN pro tempore. The time of the gentleman from West Virginia [Mr. RAHALL] has expired.

(By unanimous consent, Mr. RAHALL was allowed to proceed for 2 additional minutes.)

Mr. ROE. If the gentleman will yield, no, we do not believe it does, because when we revisited that issue we had taken both the collector sewer and the combined sewer elements out of the Governors' discretionary section and put it into a separate section. When we put it back again, in effect what we are saying now is there is more funding that would be available in the 20-percent discretionary section of the Governors than there would have been before, and also, of course, we have requested, as the gentleman knows, as a distinguished member of the committee, an increase in the funding to be allocated for this program. So all in all we figure we have at least provided a quantum step in making collector sewers—which I happen to agree with, by the way—eligible under the legislation. It is not the intent of the committee in any way to denigrate that eligibility.

Mr. RAHALL. I thank the chairman. Since collector systems remain as the only category besides rehabilitation eliminated from grant eligibility, as CSO's as being reinstated by the subcommittee, is it the intention of the committee that collector systems be the primary recipient of funding under the 20-percent Governors' set-aside?

Mr. ROE. The gentleman is correct.

Mr. RAHALL. I thank the distinguished gentleman.

Mr. Chairman, I yield to the gentleman from New York [Mr. NOWAK].

(Mr. NOWAK asked and was given permission to revise and extend his remarks.)

Mr. NOWAK. I thank the gentleman for yielding.

Mr. Chairman, I wish to associate myself with the remarks of my colleague from West Virginia regarding the importance of funding for the construction of collector pipeline systems.

I must strongly disagree with those who assert that the sole effect of collector construction is to encourage "urban sprawl" in rural areas. The simple fact is this: effective wastewater treatment facilities are systems. Each part of these systems must operate efficiently if the facilities are to properly treat municipal and industrial wastewater. The most efficient and modern wastewater treatment plant in the world is of little use if there are not adequate pipelines to collect the sewage and convey it to the plant. Collector pipelines contribute to economic expansion, not urban sprawl.

I am sure that everyone is very much aware of the national attention that is being focused on America's decaying "infrastructure." Recognizing that the aging sewer systems are a major problem facing our older industrial cities of the Northeast, I have been concerned that the 1981 amendments to the Clean Water Act would restrict Federal assistance for certain categories of wastewater treatment facilities. Under current law, such categories as combined sewer overflow [CSO] projects and collector sewers will not be eligible for full funding after October 1, 1984. However, the law does provide that each Governor would be able to use 20 percent of his annual allotment to fund such ineligible categories of construction.

I am pleased that the bill before us today does reinstate CSO projects as an eligible category for grant assistance and also provides that collector sewers would remain eligible for funding under the 20-percent discretionary fund.

Both the House of Representatives and the Senate engaged in many long hours of discussion on the collector construction issue when considering the 1981 amendments. It was determined then, and it reamins true today, that the construction of collector pipelines is a vital concern of the Congress and that this category must remain eligible for Federal funding. This message must be made quite clear to the Environmental Protection Agency and the Reagan administration, and I respectfully urge each Governor to make full use of this discretionary fund to finance necessary collector pipeline construction.

Mr. Chairman, I rise in strong support of the committee amendment in the nature of a substitute to the bill, H.R. 3282, the Water Quality Renewal Act of 1984.

The Clean Water Act, which was first passed by the Congress in 1972 as the Federal Water Pollution Control Act, has been a major force in our Nation during the past decade in cleaning up polluted waters and preventing further deterioration. As a member of the Water Resources Subcommittee, I have been actively following the implementation of this law. The bill before us today is a monumental piece of legislation that will improve the effectiveness of the water pollution control program and certainly the distinguished chairman of the subcommittee, BOB ROE, and the ranking minority member, ARLAN STANGELAND are to be commended for their ardent efforts in developing this bill. Among the most important items included in this bill are funding increases for the EPA Construction Grants Program, a new State loan program to assist in the construction of sewage treatment facilities, an increase in the Federal share for the construction of publicly owned treatment works to 65 percent, and establishment of a new grant program for the States to control nonpoint source pollution.

Included in the committee amendment is language that I sponsored during committee markup to strengthen the Great Lakes Program at the Environmental Protection Agency. I would like to take this opportunity to present the background for this amendment and explain its significance for the Great Lakes region.

With 95 percent of the Nation's surface fresh water, the Great Lakes have long been recognized as a critical economic and environmental resource for the Nation. Thanks to the Clean Water Act and the wastewater treatment program, we have begun to see hopeful signs of improvement in the lakes' water quality. The control of municipal effluents has at least checked phosphorus pollution in the lakes; the algae growth that was choking off the life in Lake Erie has begun to subside, and fish have returned to parts of the shoreline.

Yet critical water quality problems remain. In particular, the General Accounting Office, in a comprehensive report issued in May 1982, highlighted toxic contaminants and pollution from "nonpoint" sources as the two most serious long-term threats to the environmental integrity of the Great Lakes. Our reauthorization of the Clean Water Act will address these problems in constructive ways—by establishing a State grants program to help manage nonpoint pollution, and by tightening both industrial and municipal discharge limits for toxic pollutants. Unfortunately, we may not receive the maximum benefit from these improved regulatory guidelines unless we also strengthen the EPA's Great Lakes Program.

The record leaves little doubt that our commitment to the Great Lakes has been haphazard at best. The 1982 report from the General Accounting Office constituted a sweeping indictment of our neglect of one of our Nation's most critical natural resources. The report found the Federal effort with respect to the Great Lakes to be underfunded and badly disorganized. In particular, the GAO singled out the Environmental Protection Agency for its neglect of the United States-Canadian Water Quality Agreement, which set goals for both countries with respect to phosphorus, toxic, and nonpoint pollution.

The report criticized the EPA for not equipping the Great Lakes National Program Office, which was set up to coordinate U.S. efforts under the Water Quality Agreement, with the resources to do the job. As a consequence, the Monitoring and Surveillance Network for the Great Lakes, which is required under the agreement and which is so critical to an understanding of the movement and impact of toxics in the lakes, never has been developed.

According to GAO, there is virtually no coordination among the 16 Federal agencies involved in the Great Lakes, which in turn results in wasted resources. The administration's fiscal 1985 budget request would cut funding for the Great Lakes National Program Office by more than 50 percent. The Clean Water Act's section 104(f) program, which provides grants to States for Great Lakes water quality planning in coordinatiion with EPA, has never been funded by Congress.

My amendment would correct this problem in four ways:

First, by providing the EPA with a mandate to pursue the goals of the water quality agreement, develop our data base on toxic contaminants in the lakes, and in particular establish a Great Lakes Surveillance and Monitoring Network.

Second, by strengthening the organization of the Great Lakes Program. GLNPO is clearly identified as the lead agency responsible for implementing the water quality agreement. The bill provides GLNPO with a mandate to work with EPA's regional offices, with other Federal agencies, and with the States in developing and implementing strategies for meeting the goals expressed in the water quality agreement.

Third, by providing the EPA with resources for carrying out the congressional mandate. GLNPO's budget would be increased from an unrealistic fiscal 1985 request of $1.7 million to $8 million in fiscal 1986. The section 104(f) grants—which will provide the States with funds to work with GLNPO—would be authorized at $10 million in fiscal 1985.

And finally, by recognizing that the EPA must be accountable to Congress for our national effort to clean up the Great Lakes. The amendment would require the Agency to present, along with its annual budget request, a detailed work plan for implementing the goals of the water quality agreement and its progress to date.

This year, President Reagan has requested $10 million for the Environmental Protection Agency to begin a comprehensive cleanup of the Chesapeake Bay. All of us should take pride in the fact that the Chesapeake Bay water quality program is beginning to bear fruit after so many years of Federal commitment. Surely the Great Lakes deserve no less.

The bill also includes a provision I supported in committee authorizing a comprehensive EPA study of measures to control Great Lakes water use. Such a study was among proposals endorsed last November at the annual meeting of Great Lakes Governors. Concerns have been expressed that future consumptive use of the Great Lakes could seriously affect ecological productivity, hydropower production, navigation, wetlands, and fish spawning and habitat areas.

In conclusion, I urge all Members to support the passage of H.R. 3282, a sound environmental bill which preserves and strengthens our commitment to clean water.

Mr. CLINGER. Mr. Chairman, will the gentleman yield?

Mr. RAHALL. I yield to the gentleman from Pennsylvania.

(Mr. CLINGER asked and was given permission to revise and extend his remarks.)

Mr. CLINGER. Mr. Chairman, I wish to associate myself with the remarks of the gentleman from West Virginia [Mr. RAHALL] on providing adequate access for funding for collector sewer pipelines. These pipelines run from residences and businesses to the main sewer lines under streets and eventually feed into central treatment plants. The cost of hooking up to sewage systems can be quite costly. Many times the homes in rural communities use septic tanks to dispose of waste. When a community decides to process sewage on a centralized basis, mandatory hookups are often required. This can significantly add to the cost of sewage system conversions because users pay either front-end connector charges or higher consumption fees.

I am happy that the committee has

made connectors and pipeline rehabilitation eligible for funding under the 20 percent discretionary fund that Governors will administer beginning October 1 of this year. However, both connectors and storm drains are not eligible categories for Federal program funds. I believe that it is incumbent upon the Governors to give these two categories the highest priority in the administration of the States' discretionary funds because this is the only means to access funding.

If this approach fails, I think that the committee will have to give serious thought to reviewing the wisdom of the approach taken in this legislation. In the spirit of the compromise embodied in this bill, I will support the collector pipeline approach on a trial basis.

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Mr. ROBERT F. SMITH. Mr. Chairman, I move to strike the requisite number of words.

(Mr. ROBERT F. SMITH asked and was given permission to revise and extend his remarks.)

Mr. ROBERT F. SMITH. Mr. Chairman, I would like to engage in a colloquy with the subcommittee chairman, first to congratulate him for an outstanding job on this bill, and I know that his education at Oregon State University gave him the background necessary to come back with this fine piece of legislation.

Mr. ROE. I did not go to New York.

Mr. ROBERT F. SMITH. Mr. Chairman, section 319 provides that the Administrator shall not convene a management conference if he determines that there exists a management program for the estuarine zone with sufficient authority to address the purposes of this section.

This language is important because it allows States that have taken action to protect their estuarine zone will not be required to submit to a management conference as envisioned by the provisions of section 319. I would like to point out what Oregon has done to protect the estuarine zone of the Columbia River.

Oregon was one of the first States in the Nation to develop comprehensive land-use planning and to incorporate the Federal Coastal Zone Management resource protection programs and EPA water quality standards into planning law. The Columbia River Estuary Study Team [CREST] has developed land-use plans for local jurisdictions within the boundaries of the Columbia River estuary.

Oregon's land-use laws require impact assessments to determine if proposed uses are compatible with the resource capabilities of the estuary and specifically prohibit water quality and resource degradation; protect riparian habitat and freshwater marshes and lakes adjacent to the estuary; and require local governments to incorporate EPA standards into their State-approved land-use plans.

The Pacific Northwest Power Planning and Conservation Act of 1980 addresses the threat of hydroelectric development in the Columbia River to anadromous fish and has as its policy "to protect, mitigate, and enhance fish and wildlife resources of the Columbia River and tributaries affected by hydroelectric development and operations."

The Oregon Department of Fish and Wildlife must sign off on all fill and removal permits. The Oregon Department of Environmental Quality issues water-quality certificates for dredge and fill permits and issues NPDES waste-discharge permits. Oregon's strategic water planning bill is a pilot project to develop management plans that protect fish, water quality, and all beneficial uses of water within Oregon's river basins. Through Oregon's State Forest Practices Act, Oregon has accomplished significant improvement to water quality associated with forest management and has implemented EPA-approved "Best Management Practices" to minimize adverse impacts on water quality from nonpoint sources of pollution within Oregon's forests.

In addition, the Fish and Wildlife Coordination Act is a powerful and effective tool used by Federal and State fish and wildlife resource agencies to ensure proper review of permits within the estuary or river system.

Mr. Chairman, it is my understanding that with all of these protections for the estuarine zone of the Columbia River, the Columbia River would probably not be covered by the provisions of section 319's management conferences.

Mr. ROE. Mr. Chairman, I agree with the gentleman's conclusion.

Mr. ROBERT F. SMITH. Mr. Chairman, I thank the gentleman, and I yield back the balance of my time.

AMENDMENT OFFERED BY MR. MC NULTY

Mr. McNULTY. Mr. Chairman, I offer an amendment.

The clerk proceeded to read the amendment

Mr. McNULTY (during the reading): Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

The CHAIRMAN. The Chair will inquire, is the gentleman offering the amendment to the Roe substitute or to the original bill?

Mr. McNULTY. The document was prepared, Mr. Chairman, to the bill. But now that the Roe substitute has come along, it is to the Roe substitute and it simply adds entirely new material at the end of the matter now being considered by this body.

The CHAIRMAN. Does it add a section at the end of the bill?

Mr. McNULTY. It does, Mr. Chairman.

The CHAIRMAN. Will the gentleman withdraw his amendment temporarily and the Chair will recognize him for the purpose of constructing it and finding the place in the substitute?

Mr. McNULTY. Mr. Chairman, I ask unanimous consent to withdraw my amendment.

The CHAIRMAN. Without objection, the amendment is withdrawn.

There is no objection.

Mrs. JOHNSON. Mr. Chairman, I rise in support of H.R. 3282 and the committee amendment. I would like to commend the chairman, Mr. HOWARD, and the subcommittee chairman, Mr. ROE, and the ranking member, Mr. SNYDER, and Mr. STANGELAND for their outstanding work in bringing this Clean Water Reauthorization Act to the floor of the House.

The hearings have been extensive; the consideration exhaustive, and indeed, I believe that this bill strengthens our Nation's clean water laws and assures victory in the long battle against water pollution.

There are several sections that are of particular significance to the people that I represent, and in my estimation, are crucial to the goal of achieving clean water in America. I am particularly pleased that this bill preserves State control and discretion over the expenditure of 20 percent of the sewer grant money.

In Connecticut, where the infrastructure is aging, the problem of combined sewer overflows is a $500 million problem at minimum, and at this point, correction of that problem may have more to do with achieving our clean water goals than any other action. The older areas of our Nation, blessed with economic development while burdened with an aged infrastructure, depend on the discretionary portion of the sewer grant program to preserve regional balance to the Federal law.

The funding of sewage treatment plants, and in this bill that funding is somewhat more generous both in dollars and Federal share, is critical to the development of jobs and individual opportunity in some of the smaller, older, more remote urban areas. I represent areas where new jobs are desperately needed but public treatment plants cannot accept the waste of new employers. Jobs literally depend on treatment plant communication. I appreciate the increased funding and support for the construction grant program that is contained in this bill.

Mr. FLORIO. Mr. Chairman, will the gentlewoman yield?

Mrs. JOHNSON. I yield to the gentleman.

(Mr. FLORIO asked and was given permission to revise and extend his remarks.)

Mr. FLORIO. I thank the gentlewoman for yielding.

Mr. Chairman, I would like to identify myself with the remarks of the gentlewoman, and extend my support and congratulations to the gentleman from New Jersey [Mr. ROE].

Mr. Chairman, I would like to take this opportunity to thank my fellow colleagues from New Jersey Mr. HOWARD and Mr. ROE, for their diligent efforts in putting together a strong and workable Clean Water Act. Their willingness to compromise has afforded us the opportunity to put forth an agressive program to upgrade our Nation's waters.

I am especially pleased with the changes that have been made to strengthen the Clean Lakes Program. As you know, this bill authorizes $100 million in each fiscal year 1985 through 1989 for EPA to make grants to States for priority projects to control nonpoint sources of pollution which contribute to the deterioration of water quality in lakes.

Under the revised Clean Lakes Program, Alcyon Lake, located in my district in Pitman, NJ, would be given an increased chance for revival. In January 1980, Alycon Lake was closed to all contact and use due to extreme leachate contamination from the Lipari Landfill. The landfill, which is located 900 feet from the lake, is the Nation's No. 1 toxic waste site, ranking first on the Superfund National Priorities List.

The new Clean Water Act, which we consider here today, authorizes $3.5 million for a demonstration project to restore Alcyon Lake, and would require the EPA, upon completion of the project, to submit recommendations for further improvement of the lake's water quality.

Without question, these additional moneys will help speed the recovery of Alcyon Lake, and at the same time, supplement the Superfund cleanup effort already in progress at the Lipari Landfill. It is only through this type of integrated program that we can begin to protect and restore our Nation's waters from further contamination from hazardous waste and other pollutants.

Mrs. JOHNSON. I would also like to commend the committee, the chairman, and ranking member particularly, for the nonpoint source program that is initiated by this legislation. Long overdue and very significant, this bill encourages States to plan and implement programs to control pollution that originates not from a specific, identifiable source, but broadly from fields, parking lots, and other seed, in areas, which pollution represents approximately one-half the materials polluting our streams, lakes, and underground waterways in the long run.

An equally important new section of the bill addresses a problem of great significance to my constituents and that is the problem of contamination of underground waterways and acquifers and private and public wells by such contaminants as EDB.

The new program creates a 50-50 Federal-local matching grants program which will offer to the small towns of America, an opportunity to address promptly, before the problem grows and spreads, the problem of well-water pollution.

Mr. ROE. Mr. Chairman, will the gentlewoman yield?

Mrs. JOHNSON. I yield to the gentleman.

Mr. ROE. I thank the gentlewoman for yielding.

I want to compliment the gentlewoman on her extraordinary input into this legislation. I know how hard the gentlewoman has worked over the years as we have been forming it, and particularly the contributions you have made in this specific area, because I think it is a necessary area that has been void in the legislation, and you are providing, in my judgment, a major step forward for our communities as far as their water supplies are concerned, and I think it is a great tribute to you for your help in this legislation.

Mrs. JOHNSON. I appreciate those kind comments from the Chairman.

Mr. STANGELAND. Mr. Chairman, will the gentlewoman yield?

Mrs. JOHNSON. I yield to the gentleman.

Mr. STANGELAND. I, too, want to lend my words of congratulation on your initiative in this matter. I think it is exemplary of the gentlewoman's service and it is a tremendously good asset to the bill. We are talking about clean water; it is essential that our constituents and our people have clean water, and you have an initiative begun now in this bill that will be known as the Johnson Drinking Water Act individually.

I commend the gentlewoman.

Mrs. JOHNSON. Thank you very much, my colleagues. You are all most kind. I know of your long work in this area and know that you have supported as well the Superfund legislation, adopted to enable government to clean up toxic pollutants buried in our environment and endangering earth and water quality. One of the difficulties that the Federal Government faces is structuring a program to meet the massive challenge that Superfund represents but to meet as well the seemingly less important problem affecting, though devastatingly, a few. I believe it is equally important to meet the challenge of the problems individual homeowners face when their source of clean drinking water is polluted and endangered.

I do appreciate your cooperation and efforts and I know many, many families throughout America will be grateful for the action that we take today that will help them preserve the investment they have made in their property and in their home, and will preserve as well the property tax base of many a town throughout America. I appreciate your help and support, your willingness to include my amendment in the committee amendment, and your clear commitment to strengthening the Clean Water Act that has begun the process of cleaning up America's water sources so effectively.

### AMENDMENT OFFERED BY MR. M'NULTY TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY THE MR. ROE, AS AMENDED

Mr. McNULTY. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. McNulty to the amendment in the nature of a substitute offered by the Mr. Roe, as amended: At the end of the amendment, insert the following:

### STUDIES OF WATER POLLUTION PROBLEMS IN AQUIFERS

Sec. 58. (a) The Administrator of the Environmental Protection Agency, in conjunction with State and local agencies and with the opportunity for full public participation, shall conduct studies for the purpose of identifying existing and potential point and nonpoint sources of pollution, and of identifying measures and practices necessary to control such source of pollution, in the following groundwater systems and aquifers:

(1) the groundwater system of the Upper Santa Cruz Basin and the Avra-Altar Basin of Pima, Pinal, and Santa Cruz Counties, Arizona;

(2) the Spokane-Rathdrum Valley Aquifer, Washington and Idaho;

(3) the Nassau and Suffolk Counties Aquifer, New York;

(4) the Whidbey Island Aquifer, Washington; and

(5) the Unconsolidated Quaternary Aquifer, Rockaway River area, New Jersey.

(b) After completion of each study under subsection (a), the Administrator of the Environmental Protection Agency, in conjunction with State and local agencies and with the opportunity for full public participation, shall prepare a proposed management plan describing methods of implementing the measures and practices identified for each groundwater system and aquifer under subsection (a).

(c) The Administrator of the Environmental Protection Agency shall submit to Congress an interim report of the studies and proposed management plans under this section not later than one year after the date of enactment of this Act. The Administrator shall complete such studies and plans and submit to Congress a final report of such studies and plans not later than two years after the date of enactment of this Act.

(d) There is authorized to be appropriated $10,000,000 for fiscal years beginning after September 30, 1984, to carry out this section.

Mr. McNULTY (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

(Mr. McNULTY asked and was given permission to revise and extend his remarks.)

Mr. McNULTY. Mr. Chairman, I have an amendment at the desk and I would like the opportunity to explain it.

This amendment simply authorizes the Administrator of EPA, in conjunction with the opportunity for full public participation, to conduct studies to identify existing and potential point and nonpoint sources of pollution. In addition, EPA and the States are to work together to identify measures and practices necessary to control these sources of pollution in five distinct aquifers.

We chose these five aquifers, because they suffer from unique sources of potential sources of contamination; they are located in different regions of the country, but they all underly rapidly growing areas of population and they all serve areas with no future sources of potable water.

These five aquifers are:

First, the ground water system of the Upper Santa Cruz Basin and the Avra-Altar Basin of Pima, Pinal, and Santa Cruz Counties, AZ. This aquifer system which serve a rapidly growing area of 500,000 persons is threatened because of potential and existing pollution problems stemming from a mixture of sources including municipal, industrial, agricultural, and mining activities. I would like to submit here for the RECORD a list of wells which have been found to be contaminated by the Pima County Health Department:

TCE CONTAMINATION

Hughes/Airport area: 6 wells city of Tucson Water Company, 5 private wells.

Northwest Side: 1 community water supply, 2 private wells.

OTHER ORGANIC SOLVENT CONTAMINATION

Northwest Side: 1 community water supply.

MINE-ASSOCIATED CONTAMINATION

A plume of high sulfate ground water near the community water wells (Green Valley).

NITRATES

Wells near the town of Marana, 2 private wells, northwest side.

In addition, in 1980, municipal and industrial users within this ground water system depleted five times more ground water than was replenished naturally.

Second, the Spokane-Rathdrum Valley Aquifer, Washington and Idaho. This aquifer, which serves about 300,000 persons in a two State region which lies below areas of rapid growth and development shows signs of degradation and declining water quality, with particular contamination from pollutants such as nitrate and chloride introduced by septic tank seepage.

Third, the Nassau and Suffolk Counties Aquifer in New York. The aquifer is part of the largest aquifer system in New York State and serves an area with less than 3 percent of the State's land but has more than half of the people whose existence depends on ground water. Crucial to the maintenance of the water quality in the aquifer is the nearby 110,000 undeveloped acres of scrub pine.

Fourth, the Whidbey Island Aquifer, Washington. This aquifer serves a small, but rapidly growing residential community of 40,000 persons. The aquifer is threatened with contamination by salt water intrusion and total dissolved solids. In addition, this area is without any current ground water management plan.

Fifth, the Unconsolidated Quaternary Aquifer, Rockaway River area, New Jersey. This aquifer which serves approximately 90,000 persons is in area with no future sources of potable water. The aquifer is threatened with contamination from gasoline and chemical spills, leaking fuel tanks, septic tanks and leaching from open dumps.

After completion of each study, EPA and the States, with ample opportunity for public participation, will prepare a proposed management plan. The plan would describe methods of implementing the measures and practices identified for each ground water system and aquifer to be studied. It is our intention that EPA would submit an interim report of the studies and management plans within 1 year of the enactment of the legislation. EPA shall complete such studies and management plans and submit a final report to Congress 2 years after the enactment of this legislation. We are asking for an authorization of $10 million for the interim and final reports to Congress.

Mr. Chairman, the importance of ground water is obvious: It constitutes more than 96 percent of all the freshwater in the United States and over 89 billion gallons of this water is pumped out of the ground each day for a variety of potable, agricultural, and industrial uses. In addition, it has an extremely important influence on surface water quantity and quality. Therefore, the mounting evidence of widespread ground water contamination argues for immediate and effective action to prevent future contamination, to clean up ground water that has been contaminated and to safeguard the users of contaminated ground water. To accomplish this, existing ground water protection programs must be improved and new programs must be initiated to address point and nonpoint sources of contamination.

The strategy EPA proposed in January takes a useful step forward by creating an Office of Ground Water within EPA to coordinate the Agency's program affecting ground water. However, the strategy with the exception of the Office of Ground Water, is flawed because State participation is voluntary, and funding is insufficient to coordinate a national strategy with EPA or to foster meaningful State programs.

I believe that a large part of the responsibility for ground water quality lies with the States. Therefore, the intention of my amendment is for EPA to work hand in hand with the States in developing the aquifer studies and the management plans. A strong State Federal partnership is envisioned in developing methods and practices identified to protect the water quality of these aquifer systems. In addition, I believe it is of the utmost importance that full and open public participation is encouraged throughout the development of the studies and the management plans. Obviously, if we want these plans to work we must make sure that all interested parties' insight and suggestions are taken into account.

Finally, it is our intention that these proposed management plans developed by EPA and the States would, in turn, be implemented by the States in a timely fashion. It is my intention to work with the committee to provide Federal financial assistance for the implementation of these management plans to protect these threatened, but critical aquifer and ground water systems.

I believe it is time we take a holistic and preventative approach to our water quality problems. By linking ground water and surface water problems in this amendment, we will go a long way toward identifying contamination and preventing the degradation of our most precious resource, water.

Mr. SWIFT. Mr. Chairman, will the gentleman yield?

Mr. McNULTY. I yield to the gentleman.

Mr. SWIFT. I thank the gentleman for yielding.

Mr. Chairman, I ask the gentleman to yield for the purpose of entering into a very brief colloquy with the chairman of the subcommittee.

I have worked with the gentleman from Washington [Mr. BONKER] on this matter, and he has worked out this colloquy with Mr. ROE. Congressman BONKER at this point is leading a conference on the Export Administration Act and asked me if I would do the colloquy for him.

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Mr. SWIFT. I thank the gentleman for yielding.

Mr. Chairman, the Environmental Protection Agency is currently considering a request by two Alaskan pulp mills for a variance from certain requirements of the Federal Water Pollution Act. It is my understanding that section 55 of the committee amendment is in no way intended to add to, alter or affect existing law under which EPA is to make its decision on this issue. Is this correct?

Mr. ROE. That is correct.

Mr. SWIFT. It is also my understanding that this study will in no way interfere with the variance proceedings currently before EPA pursuant to these two mills, nor will it affect the timing of any decision EPA might make in these proceedings. Is this correct?

Mr. ROE. That is correct.

Mr. SWIFT. Finally, while the language requires that EPA consult with the State of Alaska in preparing this study, is it not the committee's intent that EPA also make use of existing data from its 4 years of study and public hearings on this matter?

Mr. ROE. That is correct. It is the intent of the committee that all such materials that is available will be gathered and used in the reevaluation.

Mr. SWIFT. I thank the chairman.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. McNULTY. I yield to the subcommittee, the gentleman from New Jersey.

Mr. ROE. I thank the gentleman for yielding.

Mr. Chairman, the gentleman has been very patient. We have had a chance, on our side, to review the gentleman's amendment. It is an excellent amendment because it gets into a very important issue which I know that the gentleman from Pennsylvania [Mr. EDGAR] is going to be speaking to later, and has already, which is the import of our ground water supply and the aquifer situation particularly affecting our Western States.

So from our point of view, the language the gentleman has presented is splendid. It adds a great deal to the bill and we have no objection on this side to the gentleman's language.

Mr. STANGELAND. Mr. Chairman, will the gentleman yield?

Mr. McNULTY. Indeed, I yield to the gentleman from Minnesota.

(Mr. STANGELAND asked and was given permission to revise and extend his remarks.)

MR. STANGELAND. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the gentleman from Arizona's amendment which authorizes the Administrator to study and identify control measures with respect to contaminated ground water aquifers and systems. While the Nation has made substantial progress in maintaining and restoring the quality of our surface waters, we are only now coming to realize that many of our ground water supplies are polluted and in need of better understanding and techniques for addressing this pollution. The bill under consideration offers a number of initiatives that reflect this recognition. The gentleman's amendment will contribute toward increasing our understanding of ground water pollution and resolving these problems on a priority basis. I support this effort and urge adoption of the amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Arizona [Mr. McNulty] to the amendment in the nature of a substitute offered by the gentleman from New Jersey [Mr. Roe], as amended.

The amendment to the amendment in the nature of a substitute, as amended, was agreed to.

### AMENDMENT OFFERED BY MR. DICKS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ROE, AS AMENDED

Mr. DICKS. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. Dicks to the amendment in the nature of substitute offered by Mr. Roe, as amended: At the end of the amendment in the nature of a substitute, add the following:

### PUGET SOUND

Sec. 58. (a) The Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator"), in consultation with the Administrator of the National Oceanic and Atmospheric Administration, a representative of any other interested Federal agency as determined appropriate by the Administrator, representatives of the State of Washington, and representatives of interested local governments as determined appropriate by the Administrator, shall—

(i) develop a comprehensive master plan for Puget Sound, Washington;

(2) recommended priority corrective actions and compliance schedules to address point and nonpoint sources of pollution posing the most serious problems to the water quality of such Sound; and

(3) monitor such Sound to determine the effectiveness of actions taken pursuant to the master plan.

(b) The master plan developed pursuant to paragraph (1) of subsection (a) may include, but need not be limited to, any of the following standards and practices which are necessary for the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife and allows recreational activities in and on the water:

(1) development of water quality standards for waters within the estuarine zone of Puget Sound;

(2) development of toxicity-based standards for toxic pollutants;

(3) development of water quality based effluent standards for significant point sources of pollution; and

(4) development of best management practices to control nonpoint sources of pollution.

In developing a master plan under this section, the Administrator shall survey and utilize existing reports, data, and studies relating to Puget Sound that have been developed by or made available to Federal, State, and local agencies.

(c) The Administrator is authorized to make grants to the State of Washington if such State adopts a comprehensive master plan pursuant to this section for the Puget Sound. The amount of such grant for a fiscal year, shall, subject to such amounts as are provided in appropriation Acts, be equal to 50 percent of such State's cost of implementing the master plan for such fiscal year.

(d) There is authorized to be appropriated to the Administrator to carry out this section not to exceed $4,900,000 for the fiscal year ending September 30, 1985, $4,450,000 for the fiscal year ending September 30, 1986, and $2,400,000 for the fiscal year ending September 30, 1987. Amounts appropriated under this subsection shall remain available until expended.

Mr. DICKS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Washington?

There was no objection.

(Mr. DICKS asked and was given permission to revise and extend his remarks.)

Mr. DICKS. Mr. Chairman, I will not use all my time.

Mr. Chairman, I want to compliment the distinguished subcommittee chairman and this committee for the outstanding bill that they have brought to the floor.

My amendment to the Roe substitute to the Water Quality Control Act would address a problem not specifically mentioned in the bill, that of estuary pollution plans for estuaries which only involve one single State, such as the Puget Sound plan involving Washington State.

In 1951, Puget Sound was ranked as the sixth most-polluted body of water in the United States. Since then, numerous pollution control efforts have been undertaken in the sound, resulting in improvements in water quality. However, much work remains to be done. The first Superfund national priority list ranked Commencement Bay, in the southern region of Puget Sound, in my district among its 10 highest priority sites for cleanup.

The most serious problems hampering pollution control efforts in Puget Sound have been the difficulties in identifying pollution sources and creating effective solutions. The large number of agencies with jurisdiction over Puget Sound have contributed to the problem, because coordination of efforts has been virtually impossible.

Recognizing the difficulties, the Washington State Department of Ecology and the U.S. Environmental Protection Agency have been working together since 1982 with the cooperation of our entire congressional delegation, to devise a joint strategy for water quality control. Their proposal is now completed and ready for implementation. The overall goal of the proposal is to achieve and maintain a healthy marine environment which provides for maximum beneficial use of the waters of Puget Sound.

In order to achieve this goal, EPA has established specific objectives for their plan. These objectives are: First, to define the nature and extent of existing and developing water quality problems in Puget Sound; second, to collect and evaluate information needed for abatement and long-range water quality management; third, to develop and implement appropriate abatement and remedial action plans for current priority water quality problems; fourth, to establish long-term water quality management policies to ensure protection of public health and the natural resources of the sound; and fifth, to improve communication and coordination of water quality management activities among State, Federal, and local agencies and the public of the Puget Sound region.

Washington State has already taken steps to make available a substantial contribution of staff and funding to begin this process. EPA has identified its share of the project, and the regional office has forwarded a request for reprogramming of funds to the Administrator for his immedate consideration. EPA estimates it will need $4.9 million in fiscal year 1985 for this purpose, and the total project cost through fiscal year 1987 is estimated at $11.75 million.

Regional Administrator Ernesta Barnes has assigned this proposed Puget Sound action plan her highest priority in region 10. EPA Administrator William Ruckelshaus also has expressed his support for research on pollution in estuaries, and specifically for the Puget Sound Project.

Mr. Chairman, I believe it is essential that the Federal Government provide authorization to implement estuary management plans which EPA has drafted in close cooperation with State agencies for estuaries which only involve one single State. The Puget Sound plan is one such effort, and inclusion of the project in the reauthorization of the Clean Water Act is both timely and essential. Implementation of this plan will go a long way toward addressing the chronic pollution problems of one of the more critical estuaries in our Nation. For this reason, I strongly urge my colleagues to support inclusion of specific authorization for the Puget Sound management initiative in the Water Quality Renewal Act.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. DICKS. I yield to the distinguished subcommittee chairman, the gentleman from New Jersey.

Mr. ROE. I thank the gentleman for yielding.

Mr. Chairman, again, the gentleman is making a very important point. Puget Sound is one of the most important water bodies on the west coast. The gentleman's amendment directs its attention to that issue. It is constructive. It adds to the quality of our legislative process, and we would accept the gentleman's amendment.

Mr. DICKS. Mr. Chairman, I thank the gentleman.

Mr. STANGELAND. Mr. Chairman, will the gentleman yield?

Mr. DICKS. I yield to my distinguished friend, the gentleman from Minnesota.

(Mr. STANGELAND asked and was given permission to revise and extend his remarks.)

Mr. STANGELAND. I thank the gentleman for yielding.

Mr. Chairman, we have examined the gentleman's amendment on this side and think it makes the bill a better bill. Puget Sound is a very important natural resource of this Nation, and we accept the gentleman's amendment.

Mr. DICKS. Mr. Chairman, I thank the gentleman very much. I appreciate the gentleman's support.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Washington [Mr. DICKS] to the amendment in the nature of a substitute offered by the gentleman from New Jersey [Mr. ROE], as amended.

The amendment to the amendment in the nature of a substitute, as amended, was agreed to.

Mr. PACKARD. Mr. Chairman, I move to strike the last word.

(Mr. PACKARD asked and was given permission to revise and extend his remarks.)

Mr. PACKARD. Mr. Chairman, I rise today in support of the Roe substitute to H.R. 3282, the Water Quality Renewal Act.

As a member of the Water Resources Subcommittee, I am aware of the tremendous time and energy that has gone into the development of this legislation. Chairmen Howard and Roe, as well as Mr. Snyder and Mr. Stangeland, the minority leadership, as well as the committee staff are to be commended for their efforts.

I am proud to be a member of a committee which has taken a major step toward protecting our Nation's critically important water resources. There are many significant provisions in this bill and I would like to draw your attention to two of them.

Near the border in San Diego, CA, we face a health and environmental crisis in the form of a chronically disabled sewage collection system in Tijuana, Mexico.

The combination of breaks in the collector system, households not connected to the system and overflows results in an average of 5 million gallons of raw sewage flowing daily into the United States. This situation is not expected to improve; in fact, the population of Tijuana is expected to more than double by the year 2000.

Section 42 of this bill calls for the Administrator of EPA to make a grant to the city of San Diego for the purposes of protecting the economy, health, environment, and water quality of San Diego and surrounding areas.

This grant provides for the construction of a publicly owned treatment works in the city of San Diego to provide primary or more advanced treatment of municipal sewage and industrial waste for the cities of Tijuana and San Diego.

Another salient provision of this bill is the authorization of a grant to the San Diego Water Reclamation Agency to demonstrate innovative processes which advance the technology of wastewater reclamation and which promote the use of reclaimed wastewater.

This particular process is called CCBA, pronounced see-ba. An impressive benefit of this process is the fact that the sludge generated by the water treatment process, can be converted into a high quality, environmentally safe lightweight aggregate which can be used for cement and other purposes.

Research done shows that the construction industry is interested in the lightweight aggregate and that there is a market for it.

Further, it is estimated that the capital cost of the sludge handling and aggregate production portion of the plant and all of the associated operation and maintenance costs will be offset by the sale of the lightweight aggregate.

I strongly support this impressive legislation and I urge my colleagues to vote for its passage.

### AMENDMENT OFFERED BY MR. BROOKS TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ROE, AS AMENDED

Mr. BROOKS. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. Brooks to the amendment in the nature of a substitute offered by Mr. Roe, as amended: Page 27, strike out "The" on line 4 and all that follows through page 27, line 7, and insert in lieu thereof the following: The Administrator may not later modify such eligibility determinations unless they are found to have been made in violation of applicable Federal statutes and regulations. Such eligibility determinations shall not preclude the Administrator from auditing a project pursuant to section 501(c) of this Act, or other authority, or from withholding or recovering Federal funds for costs which are found to be unreasonable, unsupported by adequate documentation, or otherwise unallowable under applicable Federal cost principles, or which are incurred on a project which fails to meet the design specifications or effluent limitations contained in the grant agreement and permit pursuant to section 402 of this Act for such project.".

Mr. BROOKS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. BROOKS. Mr. Speaker, I have an amendment at the desk.

My amendment amends section 13 of H.R. 3282. In the substitute section 13 would virtually eliminate the ability of the Inspector General to audit construction grants awarded under the Federal Water Pollution Control Act and to make recommendations to disallow costs determined to be outside the law.

Mr. Speaker, Inspectors General do not disallow costs. They are charged with the responsibility to determine whether grantees comply with the law. When they find that costs incurred by grantees are improper or do not conform with applicable Federal cost principles, they report these findings to the agency managers. These managers then review the Inspector General findings and applicable Federal rules and regulations in order to reach a final determination on which costs are in fact unallowable. The Inspector General never makes the final determination.

Section 13 inadvertently eliminates the Government's ability to recoup unlawful expenditures.

I do not think this is what the Public Works Committee intended.

My amendment would require the Administrator to enter into written agreements and stand behind those agreements but would preserve the right of the Inspector General to audit the contracts and grants and the right of the Administrator to disallow and retrieve any payments that were made in violation of Federal laws and regulations. I believe this will do what Chairman HOWARD and ROE want to do without eliminating the audit process.

Mr. BROOKS. Mr. Chairman, my amendment just makes it clear that auditing will continue to be an important function in the administration of EPA contracts and grants. I have explained it to the very distinguished subcommittee chairman, the gentleman from New Jersey [Mr. ROE], to the chairman of the full committee, the gentleman from New Jersey [Mr. HOWARD], to the distinguished ranking member, [Mr. STANGELAND], and all the staff on both committees.

Mr. LEVITAS. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to my friend, the gentleman from Georgia.

(Mr. LEVITAS asked and was given permission to revise and extend his remarks.)

Mr. LEVITAS. I thank my colleague for yielding.

Mr. Chairman, I commend the gentleman for this amendment. I think that the purpose that was embodied in the original language is a commendable purpose, and we should not want to, by inadvertence or oversight, in any way preclude the vital function of fighting waste and abuse of programs that the Inspector General is able to bring about through his audit. I think this is a constructive contribution.

Mr. Chairman, I think it is also important to point out that section 13 of the amendment in the nature of a substitute is an important section of this legislation. For years, hearings that have been held by the Subcommittee on Investigations and Oversight of the Committee on Public Works and Transportation have all too often shown that frequently, communities have found themselves faced with audits of their constructive grant projects that have claimed that some of the costs which were previously deemed eligible for Federal grant assistance from the EPA were no longer eligible.

For these communities, this has often created significant problems. They have found themselves faced with the need to come up with sometimes two or three times the amount of money they were originally told they would have to provide to finance their treatment works. In these cases, this has meant that they suddenly must borrow in some cases millions of dollars in order to meet their obligations. This has also placed some officials in local governments with the problem of having to go back to their local residents and explain why their sewer bills were going up. And it has left little room for explaining why something that might have cost less was not chosen.

Section 13 will ensure that, to the maximum extent possible, these situations will be avoided in the future. Before a community goes forward, they will now have the opportunity to know up front just what those are supposed to be

I think it is also important to point out why the additional provision to section 13 has been added.

The amendment to section 13 preserves the authority of the EPA Inspector General to carry out his function: To protect against waste, fraud, and abuse in the multibillion dollar Construction Grants Program. The provision, as it was originally fashioned, would have had the unintended effect of limiting the Inspector General's ability to ensure that the public's investment in these costly projects were maximized to the greatest extent possible.

This provision, as it is amended, now will ensure that there is no constraint on the Inspector General from carrying out his responsibilities. Yet, it also sets forth some criteria for ensuring that the process of audit and the process in determining or resolving any questions or disputes about what is eligible will not be arbitrary. I believe that overall, this amendment to section 13 and the amended provision will help to strengthen the overall program.

Mr. ROE. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to my distinguished leader, the gentleman from New Jersey.

Mr. ROE. I thank the gentleman for yielding.

Mr. Chairman, I am in accord, most assuredly, with the gentleman's clarifying amendment, both he and the gentleman from Georgia [Mr. LEVITAS], vis-a-vis the point of view that it never was the intent of the committee that there would not be adequate or proper auditing.

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I do think, however, for the value of the colloquy that we ought to comment that the purpose of the section that the committee put into this bill is to make it abundantly clear to EPA that they must tell and specify specifically what the area of agreement and the scope of the contractual arrangements are at the initiation of their grant program with any city of municipality. I would like to get that clear again on the record.

Mr. Chairman, on that basis, we have absolutely no objection to the language suggested by the distinguished gentleman from Texas.

Mr. STANGELAND. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to my distinguished friend, the gentleman from

Minnesota [Mr. STANGELAND].

Mr. STANGELAND. Mr. Chairman, I thank my friend for yielding.

We respect the chairman of the Committee on Governmental Operations insight into the need for audits. We think this is a very strong contribution to the bill. It was the intent of the full Committee on Public Works and Transportation that EPA ought to be conducting these audits, and we thank the gentleman for his contribution and we accept the amendment.

(Mr. BROOKS asked and was given permission to revise and extend his remarks.)

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Texas [Mr. BROOKS] to the amendment in the nature of a substitute offered by the gentleman from New Jersey [Mr. ROE], as amended.

The amendment to the amendment in the nature of a substitute, as amended, was agreed to.

Mr. SOLOMON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, at the outset let me just say that as a former member of the committee and as a New Yorker, I want the gentleman to know that he is welcome in upstate New York at any time, especially for the outstanding job the gentleman has done in his capacity.

Mr. Chairman, I rise in strong support of the Johnson amendment. This amendment, which has been incorporated into the committee amendment, addresses the serious national problem of ground water contamination. Thousands of drinking water sources are contaminated nationwide and the Johnson amendment provides a mechanism to immediately safeguard the American people from this health threat, something we have never had before.

I am extremely pleased to support this sound environmental approach which balances Federal and local participation in an effective effort to address a serious public health concern.

The gentlewoman from Connecticut [Mrs. JOHNSON] and the Committee on Public Works are to be commended for their outstanding work on this environmental milestone. I know how serious a drinking water contamination problem is, particularly to a community, because the residents of the town of Moreau in my congressional district, which is on the banks of the Hudson River up where the Hudson is pristine pure, are currently facing this kind of plight. A few years ago toxins were found in the drinking wells of the residents of this entire town. Yet, since that time no Federal funds have been available or no program has been available to help these people. The potential threat to the aquifer is extremely serious, not only to the 400 private wells but also to the entire Fort Edward municipal watershed, which provides drinking water to thousands of people and also pollutes the Hudson River.

At this point, I would like to yield to Chairman ROE for a colloquy concerning this matter.

Mr. Chairman, we have already discussed, the gentleman and I, with our staffs and the staffs of the minority, the town of Moreau and its needs and I am very pleased that the committee believes that the town does need a new water district because of this very serious contamination to that entire area.

Mr. Chairman, am I correct in my understanding that a new water district for the town of Moreau is considered a top priority of the committee and would be eligible for full funding under the terms of the Johnson amendment, incorporated into the committee amendment?

Mr. ROE. Mr. Chairman, if the gentleman will yield, I think the gentleman has given us a splendid summary of the entire issue involved. There is no question about it, under the Johnson language in the legislation, the town of Moreau should receive top priority.

Mr. SOLOMON. Well, again I would just like to commend the gentlewoman from Connecticut [Mrs. JOHNSON]. This is something that the gentleman's committee, of which I was a member for many years, has been working on. I think the gentlewoman from Connecticut [Mrs. JOHNSON] certainly has come up with the right approach, which is really going to help a lot of people that just cannot help themselves and after all, that is what we are here for is to help those people who cannot help themselves. The gentleman's committee certainly is to be commended.

Mr. CLINGER. Mr. Chairman, will the gentleman yield?

Mr. SOLOMON. I would be glad to yield to the gentleman from Pennsylvania.

Mr. CLINGER. Mr. Chairman, I just would like to associate myself with the gentleman's remarks and join with the gentleman in commending the gentlewoman from Connecticut on this very important provision of this bill. I think all of us, particularly those of us who represent rural areas, are aware that there is a very pressing need particularly in rural areas where we have a growing problem with ground water contamination and not the means often to address those problems. They are not limited to any particular substance. I, for example, have problems in my district where wells are being contaminated with oil and gas intrusion into the ground water, so I think this was one of the most significant things in this bill.

Again, I just want to join with the gentleman in commending the gentlewoman from Connecticut [Mrs. JOHNSON] for a very innovative approach to this very serious problem.

Mr. YOUNG of Alaska. Mr. Chairman, will the gentleman yield?

Mr. SOLOMON. I am glad to yield to the gentleman from Alaska, who represents a district a lot like mine.

(Mr. YOUNG of Alaska asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Alaska. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, I rise in support of H.R. 3282 and the amendment offered by the gentleman from New Jersey, especially section 55.

Since the Clean Water Act was first enacted, amendments have focused on the need to balance environmental protection against the ability of industries to comply with deadlines set by the Congress. At each point in the reauthorization process, we have continued to seek a realistic balance of these interests. Through this balance, we are making a great deal of progress toward our goal of clean water for our Nation, without blindly bankrupting our businesses and forcing people out of work for the sake of an arbitrary, inflexible standards.

In the amendment offered by the gentleman from New Jersey, and the bill as reported by the committee, the Public Works Committee has continued our commitment to water quality renewal. At the the same time, I believe the committee amendment maintains the proper balance of realistic, achievable environmental enforcement as well as a commitment to preserving employment for our citizens, wherever possible.

For example, in my State of Alaska, two pulp mills, employing over 1,100 people, are threatened with closure even though they have installed secondary treatment and meet State water quality standards which are among the most stringent in the Nation. This amendment offered by the Committee does not exempt these mills from compliance with the law, it merely requires the Environmental Protection Agency to study in consultation with the State of Alaska, the total environmental impacts associated with the operation of these mills and their effort to maintain compliance with section 301.

Mr. Chairman, it is important to note the Alaska mills are in compliance with EPA-approved State water quality standards. Since 1974, EPA has recognized the peculiar land, energy, and logistic constraints associated with the mills and applied a differential in discharge standards which recognizes the conditions faced by these mills located in a noncontiguous State. EPA may choose to continue this differential and is authorized to do so under current law. The amendment offered by the committee merely requires EPA to study other factors not currently considered involving the total environmental impacts associated with compliance under section 301 including air pollution, solid waste disposal, energy requirements for additional compliance. These are important factors affecting the environment in both communities.

The amendment requires EPA to study these factors and to report to Congress the feasibility of resolving these impacts associated with compliance under section 301.

It is my belief that the EPA can set a standard for compliance which resolves these impacts in a cost-efficient manner which allows the mills to continue to operate.

Both Alaska mills are located in isolated rural areas not connected by road to the contiguous States. In this setting, the loss of 500 jobs for one community of 8,000 would have an immediate and devastating effect on the local economy. Such a loss is not justified by a strict adherence to a rigid technological discharge standard especially where, as here, water quality standards are being met.

For these reasons, I support the committee amendment to H.R. 3282.

### AMENDMENT OFFERED BY MRS. BYRON TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ROE, AS AMENDED

Mrs. BYRON. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The clerk read as follows:

Amendment offered by Mrs. BYRON to the amendment in the nature of a substitute offered by Mr. ROE, as amended: At the end of the amendment add the following new section:

SEC. 58. Section 201 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:

"(p) In any case in which a dispute arises with respect to the awarding of a contract for construction of treatment works by a grantee of funds under this title and a party to such dispute files an appeal with the Administrator under this title for resolution of such dispute, the Administrator shall make a final decision on such appeal within 60 days of the filing of such appeal.".

Mrs. BYRON (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN pro tempore. Is there objection to the request of the gentlewoman from Maryland?

There was no objection.

Mrs. BYRON. Mr. Chairman, this amendment is fairly simple. It would require the EPA Administrator to make a decision within 60 days on an appeal of a bid determination. Recently, a town in my district was required by EPA to correct a problem with their existing sewage system. The town evaluated several construction contract bids and awarded the contract to the second lowest bidder after the lowest bidder proved to be unresponsive. The lowest bidder appealed to EPA to reverse the town's decision. The town complied with all EPA guidelines and ultimately, EPA upheld the decision of the town to go with the second lowest bidder. However, it took EPA over 6 months to make a decision on this particular bid determination. Subsequently, this delay forced the town to renegotiate the bid due to an increase in labor and material costs. In addition, the town has stated that it will most assuredly miss the October deadline for fiscal year 1984, resulting in a decrease of EPA funding available from 70 percent matching to 55 percent matching. I do not think that it is much to ask the EPA to make a timely decision on appeals of a bid determination. After all, EPA imposes numerous time constraints on municipalities who are attempting to comply with EPA guidelines. I believe that this amendment puts some balance back into the equation by making EPA render timely decisions and be more responsive to the concerns of towns and cities throughout the country. Thus, I urge the House to approve this amendment.

Mr. ROE. Mr. Chairman, will the gentlewoman yield?

Mrs. BYRON. I am glad to yield to the distinguished subcommittee chairman.

Mr. ROE. Mr. Chairman, I think the amendment is an extraordinarily important one because it provides a new mechanism or at least an expanded mechanism for expediting the decisionmaking process. I think it is a materially important contribution to this legislation, and we accept it on this side of the aisle.

Mrs. BYRON. Mr. Chairman, I thank the distinguished chairman.

Mr. STANGELAND. Mr. Chairman, will the gentlewoman yield?

Mrs. BYRON. I am glad to yield to the gentleman from Minnesota.

Mr. STANGELAND. Mr. Chairman, I thank the gentlewoman for yielding.

We have looked at the amendment on this side, we think it enhances the bill, and we will accept the amendment.

Mrs. BYRON. Mr. Chairman, I thank the gentleman very much.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from Maryland [Mrs. BYRON] to the amendment in the nature of a substitute offered by the gentleman from New Jersey [Mr. ROE], as amended.

The amendment to the amendment in the nature of a substitute, as amended, was agreed to.

Mr. ALBOSTA. Mr. Chairman, I move to strike the last word.

(Mr. ALBOSTA asked and was given permission to revise and extend his remarks.)

Mr. ALBOSTA. Mr. Chairman, I rise in support of the committee amendment.

Mr. Chairman, it is imperative that the House of Representatives pass the Roe substitute of H.R. 3282—the Clean Water Quality Renewal Act of 1984, in order that we carry on the important task of making our environment clean and safe for generations of Americans to come. I would like to take this opportunity to commend Chairman JAMES HOWARD of the Public Works and Transportation Committee as well as Chairman ROBERT ROE of the Subcommittee on Water Resources in addition to the ranking minority member of the full committee—Mr. GENE SNYDER and Mr. ARLAN STANGELAND of the subcommittee for their excellent work on this important bill. The gentlemen from New Jersey have taken the lead in this critical legislation and I salute them for their very hard work in this vital endeavor.

As a Congressman from Michigan, I am particularly pleased about the provisions relating to the expansion of the Clean Lakes Program which will continue to fund the cleanup of our Great Lakes. The Great Lakes are an important resource which must be cherished and taken care of, in order that the generations to come can enjoy swimming, fishing, and boating in safe and clean waters. Moreover, the Great Lakes consumptive use study which is authorized in the bill, ensures the residents of Michigan and surrounding States of an ample supply of fresh water. I firmly believe that our beautiful Great Lakes with the recreational and economic benefits it offers is such an important resource for us to protect.

Mr. Chairman, the Public Works and Transportation Committee, on which I sit, has worked many long hours in an attempt to come up with what I believe is a fair, reasonable and balanced piece of legislation which provides the needed protection for our environment without an unreasonable barrier to necessary economic development. By passing this bill, we will indicate to the country our strong concern for an effective clean water bill which is backed by our friends in the environmental community as well as those in industry I urge my colleagues to vote in favor of the Roe substitute. The best way for us to indicate our support for this environmentally sound legislation is to pass this bill, work out the differences with our colleagues in the other

Chamber, and make sure this arrives on the President's desk for his signature in the not too distant future.

Mr. HUNTER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I simply want to commend Chairman ROE and Chairman HOWARD, the gentleman from Kentucky [Mr. SNYDER], the gentleman from Minnesota [Mr. STANGELAND], and all the members of the committee and the staff for the work that they have done in putting this package together, and particularly I want to thank the committee for the concern that they manifested in this package for the present situation in southern California in my district and abutting the district of the gentleman from California [Mr. PACKARD], in which we have a tremendous flow of raw sewage coming across the border on a regular basis from Mexico, polluting our beaches and resulting in quarantines on a fairly regular basis.

I want to thank the committee for the hard work that they did. They analyzed the problem, they spent a great deal of time looking at it.

I know Chairman HOWARD was down at the site of the problem on at least one occasion when I was there, and I thank them for the efforts they have taken to try to take care of this problem.

I think it is an excellent package and I commend everybody for the hard work that they did with regard to it.

Mr. DYSON. Mr. Chairman, I move to strike the last word.

(Mr. DYSON asked and was given permission to revise and extend his remarks.)

Mr. DYSON. Mr. Chairman, I arrived at the beginning of the debate on the reauthorization of the Clean Water Act and remember saying to the counsel for the committee, Dick Sullivan, that the gentleman from New Jersey [Mr. ROE] has probably spent a great deal of time on this legislation. He turned to me and said, "somewhere on the order of 24 hours each day."

From the amount of praise that has been bestowed upon the gentleman from New Jersey, I think that observation is quite true.

I am here today to thank the gentleman from New Jersey [Mr. ROE] and also to thank the ranking minority member, the gentleman from Minnesota [Mr. STANGELAND], the gentleman from New Jersey [Mr. HOWARD] and the gentleman from Kentucky [Mr. SNYDER] for all their help in drafting the substitute before the House today.

Included in the Chairman's substitute is the language of the legislation I introduced in the House early last year. That legislation, H.R. 2817, commonly known as the Chesapeake Bay bill, is naturally very important to me and to the entire Chesapeake Bay region. The bill before us will initiate an interstate management program for the cleanup of the Chesapeake Bay.

The Chesapeake is the Nation's largest, most productive estuary in the contiguous United States. It is the home for countless forms of marine and acquatic life, a fishing industry that generates over $100 million for the regional economy each year and for shipping interests which annually carry over $27 billion in cargo.

I am proud to say that most of this great estuary lies within the state of Maryland and is the shoreline of almost every county I represent in the First Congressional District.

But as many of my colleagues know, the Chesapeake Bay is currently an estuary in decline. Two years ago, I came before the House and asked my colleagues to support a request for funding the completion of an Environmental Protection Agency [EPA] study on the bay. Last year the study was published, answering many of the most pressing questions about the bay's condition.

Its conclusions, however, indicated that a great deal of hard and thoughtful work must be undertaken in order to restore the water quality of this body of water.

The Chesapeake Bay is an ecosystem which has declined because of too many years of neglect and abuse. It has been stressed by nutrient enrichment, by sedimentation and by toxic chemicals. It has been forced to handle both agricultural and urban runoff that have harmed the striped bass and numerous other anadramous fish species which spawn in it.

The bay is also threatened by toxic compounds entering the estuary from its three major tributaries: the James, the Potomac and the Susquehanna Rivers.

These problems prompted me to introduce legislation last year that would establish a long-term Federal commitment to restore the bay's water quality. This initiative, H.R. 2817, would authorize $52 million over the next 4 years for the clean up of the bay.

Forty million dollars would to to Maryland, Virginia, Pennsylvania, and the District of Columbia in the form of grants which would be used to curb the nonpoint source pollution that has plagued the bay for so long. Additionally the EPA would receive $12 million to offer the States technical support in their clean up effort and to pinpoint the exact causes of the decline in the Chesapeake Bay strain of striped bass.

I want to alert my House colleagues to the fact that the States in the Chesapeake Bay region have acted in anticipation of my legislation passing as part of a broader reauthorization of the Clean Water Act. Maryland, Virginia and Pennsylvania have all pledged State funds so they can actively participate in the bay clean up process.

In fact, the grant formula in my bill contains a creative cost-sharing formula between the Federal Government and the respective States. I am hopeful that the cooperation it seeks to foster in restoring the bay will serve as a model for cleaning up estuaries throughout the country.

Today's action is truly an historic occasion for the people of the Chesapeake Bay region. And I want to take this opportunity to thank all of my House colleagues who have helped so much in the effort to save the bay. Of particular note are my friends who represent other portions of Maryland in Congress. They have been steadfast in their support of the bay and deserve the admiration and respect of all the citizens of our State for their work.

In addition, I want to thank my colleagues from Virginia and Pennsylvania who have cosponsored this bay legislation. They have joined men several occasions in working to strengthen the bipartisan coalition that supports its passage. There are many other House Members who have helped in this process as well. Many have joined me on the Bay to see its beauty and its problems first hand. Others have helped me in securing vital appropriations to continue the efforts to save the Bay. Seventy-four Members of this body cosponsored H.R. 2817.

Finally, I want to commend all the State officials and private citizens who have worked with me and others in the Congress to forge a national consensus behind the Chesapeake Bay clean up.

Action by the House today to pass the Water Quality Renewal Act will place us on the verge of beinning the most ambitious and comprehensive clean up of any estuary in the world. And no body of water deserves this kind of attention more than the Chesapeake Bay.

It is critical that the House adopt the committee amendment proposed by Representatives HOWARD and ROE. They have developed a Clean Water Act reauthorization package which is balanced, responsible and in the best interests of the act's original goal of providing for fishable and swimmable waters. Every Member of this body is indebtedt to them and to their fine staff for their persistence in fashioning this bill.

I urge my colleagues to support the committee amendment and to support final passage of H.R. 3282. The future of the Chesapeake Bay literally depends upon it.

Thank you.

Mrs. SCHNEIDER. Mr. Chairman, I ask to strike the requisite number of words.

I would like to take this opportunity to get involved in a colloquy with the chairman.

As you know, I have had problems and great concerns with two of the provisions of the bill, as have a number of my colleagues, in particular the gentlewoman from my neighboring State of Connecticut, Mrs. JOHNSON. Those two provisions in particular are first of all the extension of the pretreatment deadline for electroplaters until July 1985, and the second one being a provision granting EPA broad discretion to give integrated facilities an extra year in order to meet their first pretreatment deadline.

But, as you know, because the deadline for nonintegrated electroplaters has already passed, and the integrated electroplaters is imminent, these deadline extensions are at this time penalizing the companies that have invested their hard-earned dollars in pollution control technologies in favor of competitors who failed to comply with the law.

I had therefore planned to introduce an amendment deleting both provisions.

I am pleased to see that the committee has since decided that electroplaters should not get an extension beyond December 1984 and that EPA should only give integrated facilities a single compliance date where there are sound technological reasons for doing so and where the single compliance date will result in speedier, more comprehensive pollution control.

I would still prefer that there be no electroplating deadline extension and I do believe that the committee's new amendments are a very reasonable compromise, provided that we send industry EPA and our constitutents a very clear message that Congress is serious about enforcing this deadline.

I wanted to check with you to make sure that I am correct in stating that it is the committee's intent that once the December 1984 deadline expires, neither the EPA, the States, the cities, nor the courts may add a new grace period on top of that already provided by Congress. Instead, it is my understanding, as you and I have spoken, that they will be forced to vigorously enforce the deadline and obtain sanctions, including penalties against those who exceed it.

Mr. ROE. Will the gentlewoman yield?

Mrs. SCHNEIDER. I yield to the gentleman from New Jersey.

Mr. ROE. I want to thank the gentlewoman for her contribution. I would like to say at the outset that you have been a real leader in the field of environmental concerns throughout the entire Nation, not only including your own State, and I know the great work you had put into this entire issue.

The committee has listened to your observations and your advice and I can tell you frankly that what we have done here under the substitute now has made the date of December 1984 a date certain for these achievements.

Of course, all throughout the Nation people realize that that is the date that we expect those people who would be involved in this particular type of business to definitely do what they are supposed to do and do it right by that time.

As you indicated, and quite rightfully so, we have also added much stricter, not only monetary penalties into the legislation but also criminal sanctios. So I think what you are saying is that the date, and we hope that is the date. That is the intent of the committee.

Mrs. SCHNEIDER. In that case, I will not offer my amendment.

Mr. EDGAR. Will the gentlewoman yield?

Mrs. SCHNEIDER. I am happy to yield.

Mr. EDGAR. I would like to commend the gentlewoman for her action on this particular issue of electroplating. It was an issue that I was very concerned about, and when in full committee the language was changed I became very much alarmed that we were sending the wrong message out, particularly in light of the fact that we do have the technology available to use to clean up this very hazardous pollution. And I think we have provided now, with the Chairman's substitute, a clear signal that at the end of 1984 all deadlines have in fact been targeted and met and there will be no additional extensions.

So I thank the gentlewoman for her leadership. The gentlewoman from Connecticut has provided that leadership also in our committee, so Rhode Island and Connecticut have been well represented.

But I think it really reflects the interest of the environmental community across the country to set a time certain for this particular issue, and I commend you for your action.

Mrs. SCHNEIDER. I thank my colleague.

Mr. Chairman, I would also like to take this opportunity to thank you not only for your willingness to compromise on the electroplating extension, but also I would like to thank you for your support in the $1.5 million appropriation that will help to coordinate and assist the Federal and State data collection for the Narragansett Bay and the Chesapeake Bay pollution studies in order to better understand what are the actual pollutants and how to further best pursue measures to correct them.

Mr. ROE. Will the gentlewoman yield?

Mrs. SCHNEIDER. I yield to the gentleman.

Mr. ROE. May I suggest that the gentlewoman has been very, very articulate and very persuasive in her views.

Mrs. SCHNEIDER. I thank the chairman.

### AMENDMENT OFFERED BY MR. EDGAR TO THE AMENDMENT IN THE NATURE OF SUBSTITUTE OFFERED BY MR. ROE, AS AMENDED

Mr. EDGAR. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

The Clerk read as follows:

Amendment offered by Mr. EDGAR to the amendment in the nature of a substitute offered by Mr. ROE; as amended: At the end of the bill add the following new section:

"SEWAGE SLUDGE

"SEC. . (a)(1)(A) Not later than six months after the enactment of the Water Quality Renewal Act of 1984, the Administrator shall indentify those toxic pollutants which, on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect human health or the environment.

"(B) Not later than eighteen months after the enactment of the Water Quality Renewal Act of 1984, the Administrator shall identify those toxic pollutants not identified under subparagraph (1)(A) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment.

"(2)(A) Not later than eighteen months the enactment of the Water Quality Renewal Act of 1984, the Administrator shall publish regulations specifying acceptable management practices for sewage sludge containing each toxic pollutant identified under subparagraph (1)(A) and establishing numerical limitations for each such pollutant for each use of or disposal technique for sludge identified by the Administrator. Such regulations shall require compliance no later than six months after their publication.

"(B) Not later than thirty months after the enactment of the Water Quality Renewal Act of 1984, the Administrator shall publish regulations specifying acceptable management practices for sewage sludge containing each toxic pollutant identified under subparagraph (1)(B) and establishing numerical limitations for each such pollutant for each use of or disposal technique for sludge identified by the Administrator. Such management practices and numerical limitations shall be adequate to protect the public health and the evironment from any reasonably anticipated adverse effects of such pollutant. Such regulations shall require compliance no later than six months after their publication.

"(C) For purposes of this subparagraph, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under paragraph (1), he may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in his judgment is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

"(D) Any regulation issued under this paragraph shall be considered an "effluent standard of limitation" for purposes of Section 308 or Section 505 of the Federal Water Pollution Control Act.

"(b) The Administrator is authorized to conduct or initiate scientific studies, demonstration projects, and public information and education projects which are designed to promote the safe and beneficial use of sewage sludge for such purposes as aiding the restoration of abandoned mine sites, conditioning soil for parks and recreation areas, agricultural and horticultural uses, and other beneficial purposes. For the purposes of carrying out this paragraph, the Administrator may make grants to State water pollution control agencies, other public or non-profit agencies, institutions, organizations, and individuals. In cooperation with other federal departments and agencies, other public and private agencies, institutions, and organizations, the Administrator is authorized to collect and disseminate information pertaining to the safe and beneficial use of sewage sludge.

"(c) For the purposes of carrying out the scientific studies, demonstration projects, and public information and education projects authorized in this section, there is hereby authorized to be appropriated for fiscal year 1985 and ensuing fiscal years such sums as may be necessary but not to exceed $15,000,000."

Mr. EDGAR (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

(Mr. EDGAR asked and was given permission to revise and extend his remarks.)

Mr. EDGAR. Mr. Chairman, I take this time at the end of this proceeding, and I know there may be just a few additional comments to be made, to offer an amendment dealing with sewage sludge.

I feel a little bit like the character in the "Sesame Street" TV show that we used to see over and over again on public television about singing "I love trash." I would like to put out a song about how I like sludge.

It is not something that everybody wants to talk about. It is not something anybody wants to deal with, and yet we have to put an orderly process together whereby EPA puts our clear recommendations and regulations dealing with the disposal of this commodity that is created by our efforts to clean up your environment.

So, Mr. Chairman, this amendment is intended to deal with what is probably the most difficult practical problem facing sewage treatment plants in cities around the Nation. The problem is what to do with the sewage sludge which accumulates at these treatment plants.

The amendment adds specific requirements in order to put the EPA on a schedule of publishing guidelines for the safe use and disposal of sludge.

My amendment places emphasis on the responsibility of the Federal Government to provide assistance in the safe and beneficial use of this sludge.

Mr. Chairman, I hope that as we come to a close in this particular bill with this amendment, we recognize the outstanding leadership of our chairman of the subcommittee, the gentleman from New Jersey [Mr. ROE], and our ranking member on the Republican side, the gentleman from Minnesota [Mr. STANGELAND], as well as the gentleman from New Jersey [Mr. HOWARD], and the gentleman from Kentucky [Mr. SNYDER], and many others who have put this legislation together.

I also think we must commend the environmental community who kept all of our feet to the fire on this legislation, who helped us to understand some of their particular concerns. It was tough at times and I objected to some of the tactics used by some within the environmental community because I think they became too personal. But I can assure those in the environmental community, and my colleagues in Congress, that this clean water bill is clearly a clean water bill. That it does in fact continue the effort that Congress set out over 10 years ago to make sure that our waters would be drinkable and swimmable and fishable, and that we would have the desired effect of cleaning up our water supply.

So I would urge my colleagues not only to support my sludge amendment but to support the thrust of this bill and help us to move to a conference with the other body, to place on the President's desk before the election in November a strong, committed environmental piece of legislation that continues a strong, committed effort to clean up our waters.

Mr. Chairman, again, this amendment is intended to deal with what is probably the most difficult practical problem facing sewage treatment plants in cities around the nation. The problem is what to do with the sewage sludge which accumulates at such treatment plants.

The amendment adds specific requirements in order to put the EPA on a shedule for publishing guidelines for the safe use or disposal sludge. My amendment places emphasis on the responsibility of the Federal Government to provide assistance in the safe and beneficial use of sludge.

Although sludge, if properly treated ans monitored, can be a resource, sewage authorities have found great difficulty in obtaining public acceptance of the use of sludge for such purposes as mine reclamation, soil enhancement, and other purposes. Sludge is not a nice word, and not a nice concept for most people. Few people seem to want it in their back yards, their parks or their forests. Such public caution is wise if the product contains toxic chemicals or metals from industrial processes, but proper wastewater treatment and management practices can remove dangerous pollutants and render sludge a truly beneficial product.

The alternatives to land disposal of sludge are either ocean dumping or incineration. Dumping of even well-treated sludge into the ocean can be severely disruptive of the marine environment and shore communities. Incineration requires very large capital investments and poses possible hazards to air quality. Ocean dumping has been discouraged by a number of Federal statutes, and many of our cities have complied with this wise policy. However, the Federal Government has neglected its responsibility to explore and promote responsible alternatives to outright disposal of sludge. Despite aggressive efforts by the private sector and local authorities to market sludge products, the EPA has refused to provide the types of strict public health and environmental guidelines which could reassure the public about the safe use of sludge. The Federal Government has also failed to provide any visible assistance to promoting the safe use of sludge.

The city of Philadelphia, with massive sewage treatment requirements, has refrained from dumping sludge in the ocean since 1977 and explored creative techniques for land application at mine sites as well as parks within the city. Philadelphia has encountered nearly intractable public acceptance problems despite the advanced pollution control techniques in place at the city's new sewage treatment plants. Although State environmental authorities carefully regulate and monitor sludge use, a Federal seal of approval has been lacking because the EPA has refused to promulgate detailed sludge use guidelines. Philadelphia is only an example of the types of problems which have plagued the District of Columbia, New York, and nearly every other city in the country. Yet, EPA has declined to aggressively help sort out this mess.

My amendment would require two actions by EPA. First, it would require the Administrator of EPA to publish detailed guidelines and numerical pollutant standards governing environmentally acceptable use of sludge for specified purposes. The EPA would be on a strict time schedule for this regulatory process, with complete regulations due within 2½ years after enactment of this act and interim regulation due within eighteen months.

The amendment also authorizes the Administrator to conduct or initiate scientific studies, demonstration projects, and public information and education projects designed to promote the beneficial use of sewage sludge for such purposes as restoration of abandoned mine sites, conditioning of soil for parks and recreation areas, and agricultural and horticultural uses. Finally, the amendment authorizes the expenditure of $15 million by the EPA in subsequent years to carry out projects and activities which will help solve the sludge disposal and use problem. This is a small but needed sum in comparison with the multibillion dollar investment we have authorized for the removal of pollution from our wastewater.

My amendment also authorizes the Administrator to collect and disseminate information regarding the beneficial use of sludge. Many communities throughout the United States currently make use of their sludge in safe and environmentally sound ways. These initiatives are not receiving the attention they deserve.

My amendment will give EPA the resources needed to study these programs and report on their status and long-term potential. In conducting these activities, EPA should focus particular attention on our major metropolitan areas where sludge management has been a major, ongoing problem. In many cases, the implementation of innovative and positive programs has led to the safe and beneficial use of sludge. Regional seminars on sludge management would allow firsthand information exchange and discussion of sludge use to publicize the concept of sludge as a resource rather than a waste.

This is an especially difficult problem faced by many of our cities which have complied with the tough requirements of the Clean Water Act. Congress should press the EPA to move forward on this problem in a more aggressive way, and I urge adoption of this amendment to ensure that this problem is dealt with.

Mr. ROE. Will the gentleman yield?

Mr. EDGAR. I yield to the gentleman from New Jersey.

Mr. ROE. I thank the gentleman for his splendid contribution and his comments, and also for his leadership in his groundwater amendment, and particularly the sludge amendment now.

I think this is the one big open item in the entire environmental community as to what we do with that, whether we burn it, dump it into the ocean as has been debated, or whether we bury it in contamination vaults.

I think it is a very key environmental area and a key issue as far as this legislation is concerned.

By all means, we accept your most splendid amendment as it adds to the quality of this bill.

□ 1700

Mr. EDGAR. I thank the gentleman for his comments.

Mr. STANGELAND. Mr. Chairman, will the gentleman yield?

Mr. EDGAR. I yield to the gentleman from Minnesota.

Mr. STANGELAND. I thank my friend for yielding.

Certainly we on this side have looked at the amendment, we accept it. Beyond that, I would like to say I want to commend the gentleman for being a catalyst in working to put this together.

Perhaps one of the strongest environmentalist advocates here in the Congress, certainly on the Committee on Public Works and Transportation. Had it not been for his strong association with these environmental groups, it might have been more difficult for the chairman of the subcommittee and the chairman of the full committee to bring that to fruition. But because of that close association, because of the respect that he has in that community and on the committee, he has been a catalyst.

I want to commend his role in this clean water bill, because it is a clean water bill. We would be happy to accept the amendment.

Mr. Chairman, I rise in support of the gentleman from Pennsylvania's amendment.

The question of proper sludge treatment and disposal practices is one of the most important matters dealt with by the Clean Water Act. It makes very little difference that we are removing pollutants from waste streams in our cities if, in the process, all we are doing is transfering the pollution from our water to the land. The situation becomes even more critical in light of the fact that, in many instances, sludge from wastewater treatment plants is used as fertilizer, fill for reclaiming abandoned mines, and other nonwaste purposes. Under these circumstances, it is absolutely essential that we ensure to the maximum extent practicable that sewage sludge does not contain toxic pollutants in concentrations that may adversely affect human health or the environment.

The question of proper use and disposal of sludge is not a new issue. The Agency has been tasked with providing sludge use guidelines since Public Law 92-500 in 1972. Again, in the 1977 Clean Water Act, Congress focused on the need to develop adequate procedures and requirements for disposing of sewage sludge and amended the act to require promulgation of guidelines and necessary regulations. Unfortunately, we are still awaiting the product of the work that has been ongoing at EPA since 1977.

The gentleman's amendment is intended to accomplish this objective. It is drafted in a way to emphasize once again how important the Congress believes this issue is. It is a good amendment and I urge its adoption.

Mrs. JOHNSON. Mr. Chairman, will the gentleman yield?

Mr. EDGAR. I yield to the gentlewoman from Connecticut.

Mrs. JOHNSON. Mr. Chairman, I want to commend the gentleman from Pennsylvania on this amendment. Without the work that he is requiring EPA to do in regard to sludge identification, classification, testing and catalyzation, the environmentally committed entrepreneurs of America cannot find ways to reuse this material in a constructive environmentally sound fashion.

I have in my own district a creative young man who has, through the way he manages his plant, demonstrated the soundness of his concern for the environment and his willingness to invest in environmentally sound methods, who has discovered a way to bond sludge together.

The CHAIRMAN pro tempore. The time of the gentleman from Georgia has expired.

(By unanimous consent, Mr. EDGAR was allowed to proceed for 1 additional minute.)

Mr. EDGAR. I yield to the gentlewoman from Connecticut.

Mrs. JOHNSON. It is a very promising process. It will have commercial application. It will be a building material. But there simply is no framework within which this material can be evaluated publicly. And I appreciate the gentleman's leadership in this area.

Mr. EDGAR. I thank the gentlewoman.

Let me conclude by saying that I love sludge and I love the fact that the Members have accepted the amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania [Mr. EDGAR] to the amendment in the nature of a substitute offered by Mr. ROE, as amended.

The amendment to the amendment in the nature of a substitute, as amended, was agreed to.

Mr. ANDREWS of Texas. Mr. Chairman, I move to strike the last word, and I rise in support of the Roe substitute.

(Mr. ANDREWS of Texas asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS of Texas. I will not take all of my time. I wanted to take an opportunity to congratulate Chairman HOWARD and Chairman ROE for their leadership on this very important bill.

I think the key point about this piece of legislation is that it is a forged compromise that is truly a strong environmentally-supported bill. I urge all my collegues to support this piece of legislation.

Mr. DONNELLY. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the substitute.

(Mr. DONNELLY asked and was given permission to revise and extend his remarks.)

Mr. DONNELLY. Mr. Chairman, I rise to commend the diligent efforts of Representative HOWARD, chairman of the Public Works and Transportation Committee, Representative ROE, Chairman of the Subcommittee on Water Resources, and the ranking Republican members of the committee for successfully bringing H.R. 3282, a 4-year reauthorization of the Clean Water Act, before the House today. Today's actions culminate work that began late in the 97th Congress to reauthorize the construction grants program and review many of the important provisions established in the 1972 Clean Water Act.

As the cornerstone of water pollution control, the Clean Water Act symbolizes the progress we have made toward maintaining and improving the water quality of rivers, lakes and estuaries across the Nation. H.R. 3282 is a remarkable product of consensus among the often conflicting interests of environmental and industrial groups and provides continued hope for a complete cleanup of the Nation's waterways.

The objections raised to H.R. 3282 have been addressed by the committee with the resulting compromise representing a marked improvement in our clean water program. The most important of these improvements is a strong reauthorization of the construction grants program which will provide adequate Federal funding to continue the construction of needed waste water treatment facilities. Also included are rational and enforceable compliance deadlines that will allow the EPA to proceed on schedule with its industrial and toxic waste programs.

Several provisions in H.R. 3282 are particularly important to the inhabitants of the Northeast which has water pollution problems that are unique to this region of the country.

Combined sewer overflows are a problem for the older cities of the Northeast that date back to the late 1800's. When these cities were constructed there was no reason to separate storm water runoff from sewage disposal and a combined sewer system resulted. Growing populations soon made it apparent that these combined systems were not viable because overflows produced the discharge of raw sewage into open water bodies. H.R. 3282 recognizes the problem of these overflows by increasing and extending the authorization for addressing this most urgent problem.

Also included in H.R. 3282 is a provision authorizing $25 million annually to assist States in restoring water bodies that have deteriorated as a result of acid deposition. This is a temporary, but necessary effort to battle the degrading effects acid rain has had on the life-sustaining capability of lakes and streams in the Northeast.

Finally, of particular importance to my own city of Boston is the $30 million authorization for emergency repairs at the Deer Island sewage treatment facility. The deplorable state of this facility results in frequent breakdowns of machinery that produce massive sewage backups in the entire metropolitan system. These backups discharge raw sewage into Dorchester Bay, Quincy Bay, and Boston Harbor, closing beaches during the summer and contaminating the shellfish beds located throughout the area. The $30 million authorization for Boston will provide a cost-effective and efficient solution that will significantly improve water quality for the entire Boston area.

Mr. TOWNS. Mr. Chairman, I move to strike the requisite number of words.

(Mr. TOWNS asked and was given permission to revise and extend his remarks.)

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. TOWNS. I yield to my good friend, the gentleman from California.

Mr. MINETA. I thank my colleague for yielding.

Mr. Chairman, I rise in strong support of the amendment in the nature of a substitute offered by the gentleman from New Jersey [Mr. ROE].

I had reservations about H.R. 3282 after it was voted out of the Public Works and Transportation Committee and I felt that the bill could use some improvement in a handful of areas so that it would be the strongest, best environmental bill possible.

I am extremely pleased to see that the gentleman from New Jersey who chairs the Subcommittee on Water Resources, has prepared a package of amendments in the nature of a substitute which addresses these concerns. If this amendment is passed, the House will have the opportunity to vote out a strong Clean Water Act reauthorization bill.

I urge my colleagues to join in supporting the Roe substitute. It is a carefully crafted compromise and the result of weeks of hard work by Mr. Roe, Mr. Howard, Mr. Snyder, Mr. Stangeland, their committee staff, environmental representatives, and others.

I commend all of these experts on their diligence and commitment to the integrity of the Clean Water Act and to the goal of making our Nation's water resources safe and of the highest environmental quality. With adoption of the Roe substitute, H.R. 3282 will be legislation in which we can all take pride.

Mr. TOWNS. Mr. Chairman, I rise to express my support for H.R. 3282. I would like to commend Chairman Howard, Subcommittee Chairman Roe, Geraldine Ferraro, Guy Molinari, and the other members of the Committee on Public Works and Transportation for their diligent efforts on this bill. One of the provisions of direct concern to me and my constituents is section 33, which addresses a serious, yet unique problem.

I offered this section in committee to rectify a substantial inequity created by an anomaly in New York State law which, as a practical matter, requires gas utility relocation expenses incurred because of certain EPA wastewater treatment projects to be borne exclusively by local gas consumers. Specifically, millions of dollars in gas utility relocation expenses caused by construction of two EPA-funded projects in New York, the Red Hook and Oakwood Beach projects, have been and will be borne solely by gas consumers in New York City if special consideration is not given. This is especially disturbing to me in light of the fact that more than 40 percent of the gas consumers involved are low-income and elderly people living on fixed incomes. It is simply unfair to add this burden squarely on these people who are not in any way special beneficiaries of these projects. Moreover, the relocation expenses involved are indeed extraordinary in relation to other projects in other areas.

Generally, the burden of federally financed construction should not be borne disproportionately by gas consumers in one State. It is noteworthy that EPA does share in the gas utility relocation expenses incurred in other States on projects funded under the Clean Water Act. These States include, for example, New Jersey, Illinois, Michigan Rhode Island, Ohio, Connecticut, and Pennsylvania. To require any one group of individuals located in a distinct geographic sector to pay more than a prorata share of the project cost clearly places an unjust burden on those individuals.

The purpose of section 33 is simply to direct the EPA Administrator to reimburse, at the statutorily applicable Federal share, the gas utility relocation costs incurred in connection with the Red Hook and Oakwood Beach projects. This section will reimburse expenses only to the same extent as the Federal share of any other project cost. Most importantly, section 33 will not diminish or in any manner impact the EPA Construction Grants Program funds available to any State. A separate authorization is provided in the section to assure this result.

The section is limited to relocation of natural gas facilities in New York City because of the detailed hearing record on this very specific problem. Testimony before the subcommittee illustrated the extraordinary cost impact of these projects on gas consumers. Thus, section 33 was adopted to cover the total gas utility relocation costs incurred to date and to be incurred in the future on these projects. Simply stated, it covers all relocation expenses for the entire two projects designated. These expenses would include costs incurred in the relocation of facilities, such as gas lines, valves, and related compressor equipment, as well as costs necessary to support and protect facilities influenced by the projects.

An additional benefit of section 33 is that it minimizes economic waste because it encourages local project administrators to coordinate with the gas utility in seeking the most economic and efficient relocation plans.

In sum, Mr. Chairman, I am pleased to support H.R. 3282 and particularly section 33 relating to gas utility relocation expense reimbursement on the Red Hook and Oakwood Beach projects.

Mr. LEVITAS. Mr. Chairman, I move to strike the requisite number of words, and I support the substitute.

(Mr. LEVITAS asked and was given permission to revise and extend his remarks.)

Mr. LEVITAS. Mr. Chairman, it has become almost a ritual in this body as we conclude the debate on important legislation that we heap praise upon the managers of the bill, the ranking Members who played a role in constructing it.

It has become so much of a ritual that I fear sometimes we do not really give enough serious consideration to the words that are spoken on behalf of some of the efforts.

But I have watched very carefully the work that was done on this bill. It was done meticulously, quietly, conscientiously and diligently by the gentleman from New Jersey, the chairman of the subcommittee; the gentleman from Minnesota, the ranking member. The cooperation and involvement of the chairman of our full committee and of the ranking member of the full committee was not perfunctory.

These people worked day and night, literally, piecing together an extremely important piece of environmental legislation. It is not only good legislation for the environment, it is also reasonable and it is balanced.

And I think that that is an extremely remarkable achievement, given the situation in this instance which was one in which there were the competing efforts and points of view at work.

□ 1710

As I look back over the last few years of this administration, I suppose if there is one area in which the original policies and programs of this administration were wrong—dead wrong, and were not supported by the American people, and for which there was never a mandate, it was in the area of the enviornmental protection and conservation. I think that it is a tribute to the processes of our system that the administration, if not completely changing its policy and program, has at least, as a result of the efforts which have been made in the Congress of the United States, rejected and stopped those wrong policies. James Watt is gone. Anne Gorsuch Burford and 13 Presidential appointees are gone. We made a difference and a change.

The American people have said time and again that they want clean air to breathe, they want clean water to drink, and they want soil that is free from contamination of toxic chemicals.

What we have seen today in the clean water area is a result of our efforts to turn President Reagan's policy from error and destruction. The American people are willing to pay for a healthy environment. They have time and again in polls said, "We think a clean environment is vital and we are willing to pay what is necessary and accept reasonable controls."

Mr. MOLINARI. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I yield to the gentleman from New York.

(Mr. MOLINARI asked and was given permission to revise and extend his remarks.)

Mr. MOLINARI. I thank the gentleman for yielding.

Mr. Chairman, I would like to associate myself with the eloquent remarks of the gentleman from Georgia [Mr. LEVITAS].

Mr. Chairman, I would like to commend the chairmen and the ranking members of the Committee on Public Works and Transportation and the Subcommittee on Water Resources for their extraordinary effort in fashioning this Clean Water Act reauthorization legislation before us now in the form of a substitute.

A great deal of deliberation went into drafting and redrafting this bill in order to come up with the most acceptable language to all parties involved. It is no secret that both environmental and industry groups protested certain provisions of the previous legislation. The fact that such diverging views could reach an agreement points out the exceptional compromise which this legislation represents.

We have made impressive progress thus far in cleaning up our Nation's waterways. It is imperative that we continue to rejuvenate America's waters at an accelerated pace. While the legislation before us today is not revolutionary, it addresses those areas within current law which have proven especially difficult to implement and which need reform to be more effective. Now is the time that we reevaluate our efforts and attempt to correct the regulations which have caused significant administrative backlog and have hindered progress in achieving our goals. Absent of such reform, further advancement will likely grind to a halt.

This reasonable compromise encompasses a balanced approach which both the environmental and industrial representatives recognize will strengthen the protection of our Nation's waters while alleviating some of the impractical regulatory burden. I doubt that a better legislative remedy could have been crafted.

Several fundamental, yet problematic, areas have been skillfully addressed. The discharge permit system, which has experienced substantial backlog, is extended from 5 years to 10 years. However, it allows permits to be reconsidered where there are changes in toxic regulations or water quality standards. Another provision extends electroplating deadlines to December 1984, with no further extensions. Integrated facilities with more than one wastestream would have a single compliance deadline 1 year after the first deadline and only when the technology requirements are the same for the various processes.

The compromise package would also maintain the current law which permits States to use up to 20 percent of its construction grant allotment for collector sewer lines which run from homes to central treatment plants, rather than making collector sewer lines fully eligible for Federal wastewater treatment construction grants. Retaining this provision focuses our attention on the priority of pollution control rather than spending precious moneys on costly pipelines which do comparatively less in alleviating our real pollution problems.

I am pleased to note that four provisions of my own Clean Water Act amendment legislation, H.R. 5512, is included in this substitute package. For example, one of my provisions contained within this legislation is intended to force all States to comply with the standards established by both interstate and intrastate water quality plans by withholding grant moneys for any proposed construction project located within an area which is out of compliance with the standards set forth by the water quality plan for that area. Furthermore, this provision will give interstate agencies a stronger mandate to enforce interstate, areawide water quality standards so that one State is not precluded from receiving construction grant funds due to the negligence of another State located within the same areawide, interstate water quality management plan.

Another provision would provide for further research on the rising levels of pollutant contamination within marine life that directly effect public health, and research designed to reduce and eliminate such contamination. In my own metropolitan area of New York City, both the shellfish and striped bass industries have been reduced to virtually nonexistant levels. But even more disturbing than the damage suffered by the industry is the threat which such levels of pollution pose to human health. It is time that we upgrade the quality of waters to safeguard public health and allow for the restoration of the indigenous marine population.

Finally, I applaud the greater weight given to the responsibilities of interstate agencies. The legislation requires that any time a group of States convene for a water quality management conference, if there is an interstate agency for those States that agency will be the lead agency. This is important to ensure that an interstate overseer would put the welfare of the waterbody before the unilateral interests of an individual State.

In conclusion, I urge my colleagues to support this reasonable and effective approach toward upgrading and protecting our Nation's waters.

Mr. LEVITAS. I thank the gentleman.

Mr. FEIGHAN. Mr. Chairman, will the gentleman yield?

Mr. LEVITAS. I am happy to yield to the gentleman from Ohio.

(Mr. FEIGHAN asked and was given permission to revise and extend his remarks.)

Mr. FEIGHAN. I thank the gentleman for yielding.

Mr. Chairman, I, also, would like to associate myself with the gentleman's remarks.

The CHAIRMAN pro tempore. The time of the gentleman from Georgia [Mr. LEVITAS] has expired.

(By unanimous consent, Mr. LEVITAS was allowed to proceed for 1 additional minute.)

Mr. LEVITAS. Mr. Chairman, it is for that reason that I think this legislation is one that all of us should support.

I know that there were some in the environmental community who I think took positions that almost went to the extreme and that they undid the good work that was accomplished by the Congress up to this point through over zealousness, shrillness, and personal attack. The environmental movement, which was longuishing, really got new life through the excess negativism of this administration's wrong policies. It would be a shame if they lost this second chance for success by excess zeal, unreasonableness, and elitism. But wiser and cooler heads prevailed and the consensus with the environmental community come back to a more balanced position which will gain the continued broad public support for an effective and reasonable environmental protection program.

It is in part for that reason that I, in consultation with the gentleman from New Jersey, did not offer an amendment which I had intended to offer that would have reduced from 65 percent to 55 percent the share of the Federal portion of this program in order to give incentives to the various municipalities to move forward. Because I believe that the gentleman understands the problem and I think has, by this legislation and its funding levels and with the framework that it has established, struck the proper balance for effective environmental protection.

Mr. Chairman, in mentioning the question of the Federal share, I want to reemphasize the fact that we have for years been providing ever-increasing amounts of Federal assistance to local communities in order to assist them in meeting the clean water law's mandatory requirements for wastewater treatment and pollution abatement. But I have continued to be concerned that by increasing the amount of funding every few years, and by increasing the Federal share of a wastewater grant projects costs, we have encouraged many communities to wait as long as they can, so that in the end, when they were finally forced to cleanup, they would obtain the maximum Federal share. In a sense, we have been encouraging the recalcitrant community to wait and to delay.

In 1981, we began to change things. The amendments to the law that year reversed this historical pattern by reducing the Federal share. There was a concern among many, though, that this reduction in the Federal share was too much, too quickly, and that it would create considerable problems for many communities who had begun costly, multiyear projects in good faith. Indeed, our oversight hearings and reports also recommended that the reduction in the Federal share of these projects be a phased and gradual one.

It is for these reasons that I am supportive of this bill's provisions to adjust the 1981 change so that the net effect will now be to reduce the Federal share from the current 75 percent of a construction grants program project's costs to 65 percent. I am also pleased that this will help communities to respond to the change in a more reasonable way. It provides time for adjustment.

I also understand that the gentleman from New Jersey would consider this matter in the future, when the authorization in this bill expires. I think that is most appropriate, for it ensures that we are able to have an opportunity to further review the progress of this program, and to evaluate the overall Federal assistance that is needed.

In the meantime, this provision does reduce the Federal share, and it does continue to send the same signal that we began to send in 1981 for the first time in many years. That waiting and delaying in cleaning up pollution will not be to a community's advantage. We will no longer reward the recalcitrant.

● Mr. PANETTA. Mr. Chairman, I would like to express my strong support for a provision in H.R. 3282, which will be extremely helpful to some residents of my district, and I believe to other individuals throughout the country who benefit from wastewater systems financed under the Federal construction grants program.

The San Lorenzo Valley Water District, in my congressional district of California, is currently in the process of preparing a grant proposal for a new and much-needed wastewater management system. Some of the area's residents have been deeply concerned over the cost impact of the proposed project on fixed and low-income senior citizens and families living in the project's service area. Under current law, these users cannot be charged a lower than proportionate share of the system's costs. As a result, the local community is precluded from offering any assistance to economically disadvantaged local residents, for whom the service charges associated with the project will represent a significant financial burden.

The language included in H.R. 3282 resolves this problem by allowing lower charges to low-income residential users of federally assisted wastewater systems, while requiring public notice and hearing as well as review and approval by the EPA.

I believe this provision will increase the flexibility of local communities in dealing with wastewater management and disposal problems, by allowing them to subsidize low-income residents if the community judges that to be a valid and worthwhile policy. Current law is intended to disallow subsidies to industrial users, and that is a sensible limitation. But current law also has the effect of placing an unnecessary restriction on assistance to low-income users of wastewater systems. This language simply allows local governments to deal with the issue on a local basis, depending on each community's situation and needs.

I am grateful for the assistance of the subcommittee and committee chairman in including this language in H.R. 3282, and I urge my colleagues to support it.●

● Mr. FAZIO. Mr. Chairman, reauthorization of the Clean Water Act is vital for keeping our lakes, rivers, and other waterways safe and clean for America's future. I, therefore, rise in support of H.R. 3282, the Water Quality Renewal Act.

I also want to take this opportunity to commend the leadership of the Committee on Public Works and Transportation for their diligent efforts to bring this legislation to the floor. Chairman HOWARD, Subcommittee Chairman ROE, and ranking members SNYDER and STANGEL deserve our thanks for their commitment to achieving the goals of this important legislation.

This legislation reaffirms the commitment of Congress to the original goal of the Clean Water Act of 1972—attaining fishable, swimmable waters for all Americans. Although this goal has not yet been achieved, significant progress has been made over the past several years. Our publicly owned waste water treatment plants are removing more than 13,000 tons per day of pollutants from our waters, an increase of 65 percent over 1973 levels. That is real progress, Mr. Speaker.

H.R. 3282 seeks to continue and expand the water cleanup program. It would limit raw sewage discharges into estuaries and the ocean. It maintains water-quality standards, wetlands protection, and funding for the important clean lakes program. It also increases funding for sewage treatment under the construction grants program, and authorizes $1.6 billion for a new loan guarantee program, to be used by the States to help municipalities with sewage-treatment construction.

Mr. Chairman, these reforms are absolutely essential for thousands of small towns across the Nation who are trying to comply with EPA waste water treatment standards. A survey I took this year indicated that over 80 percent of the mayors in my district have experienced serious problems with the construction grants program. It is simply inadequate and too inflexible to meet the clean water needs of rural American communities.

I also want to thank the chairman for agreeing to allow collector sewers to remain eligible for funding only under the current 20-percent discretionary fund. This will allow many smaller communities to select less costly, more environmentally sound alternatives to the construction of collector sewers.

Again, in the interest of clean water for ourselves and many future generations, I urge my colleagues to support this carefully crafted compromise without further delay.●

● Mr. LIPINSKI. Mr. Chairman, I rise in strong support of the committee amendment in the nature of a substitute to H.R. 3282, the Water Quality Renewal Act of 1984. The Water Resources Subcommittee under the able chairmanship of Representative Bob Roe has worked long and hard for many months in attempting to fashion a strong bill that will ensure that our Nation's water supplies continue to meet the fishable and swimmable goals set forth in the 1972 Clean Water Act.

Included in the committee amendment is an authorization for a study of the consumptive uses of Great Lakes water. Earlier this year I introduced legislation that would authorize the Environmental Protection Agency, in cooperation with the Great Lakes States to undertake a comprehensive study of all possible control measures to reduce the quantities of Great Lakes water consumed. The major provisions of my bill have been incorporated into the committee substitute to H.R. 3282.

One of the objectives of the Clean Water Act is to provide for the protection and propagation of fish, shellfish, and wildlife, and to provide for recreation in and on the waters of the Nation. Those of us who live in the Northeast and Midwest regions of the country have traditionally enjoyed plentiful supplies of fresh water from the Great Lakes that surround our borders. We want to ensure that we will always have this resource readily available.

Recent studies by the International Joint Commission have indicated that future consumptive uses will put a serious strain on the ability of the Great Lakes system to maintain those water levels and flows necessary to maintain ecological productivity and to avoid serious losses to important Great Lakes interests such as hydropower production and navigation. The Commission projects a fivefold increase in the amount of Great Lakes water that will be consumed over the next 50 years. Most of the increase in water consumption will be due to growth in the manufacturing and thermal-power-generation industries. In 1975, the consumptive use of Great Lakes water was estimated at 3.2 billion gallons per day. By the year 2035, it has been estimated that consumptive uses will increase to over 16.4 billion gallons per day. There will be a corresponding drop of 9 inches in water level on the lakes with this increased usage. The economic losses and direct costs to navigation and hydropower interests alone are projected to exceed $200 million annually by the year 2035.

The idea of a study of Great Lakes consumptive uses was endorsed by the Council of Great Lakes Governors at a conference last November. It is vital that our region develop a unified position on the use of our water. In addition this study will take into account the past and future water requirements and uses that will have to be met, to ensure our regions' ability to remain economically viable.

Once again I want to thank the committee for including this provision in their legislation and I urge all of my colleagues to vote for H.R. 3282.●

● Mr. ST GERMAIN. Mr. Chairman, today I find myself in a most difficult position with respect to H.R. 3282, the Water Quality Renewal Act. The reauthorization of the Clean Water Act is extremely important for our Nation's environment. A number of my colleagues have worked diligently to develop a bill that on the whole is a good, strong piece of legislation, one which if enacted into law will maintain the progress which has been made under the Clean Water Act.

Unfortunately, one section of the compromise legislation which is being presented is most difficult for me to support. I am referring to the 6-month extension for pretreatment deadlines for the electroplating industry. The electroplating industry has a strong presence in my district and the discharges of the industry are particularly harmful to our water quality. In my view, the industry has been given sufficient time to comply with the deadlines originally set. Indeed, many firms have made the effort, and have met the deadlines. To extend the deadline for the electroplating industry sets a bad precedent. If we grant an extension for one industry, how can we deny it to others? Moreover, it is patently unfair to those who have made the necessary investments to meet the pretreatment standards on time to grant their competitors an extension. Such an action rewards those who have ignored the law, while penalizing those who have acted in good faith to obey the law.

Enough environmental damage has been done by the untreated discharges from industry; deadlines have been set and they should not be set aside. It is simply bad policy to constantly push back deadlines. When will industry ever believe Congress? How will they know what the real deadline is, if we repeatedly allow the deadline to recede into the future?

I am faced with a real dilemma in deciding my vote on this bill. On the one hand, I believe it is crucial to reauthorize the Clean Water Act. On the other hand, I find this particular provision to be bad policy for the Nation and especially harmful to my district. My vote for H.R. 3282 is cast with the greatest reluctance because of the extension of the deadline for electroplaters to comply with pretreatment standards.●

● Mr. LOWERY of California. Mr. Chairman, I rise in strong support of H.R. 3282, the Water Quality Renewal Act of 1984. I would like to commend the gentlemen from New Jersey, Mr. Howard and Mr. Roe, for their diligent efforts in bringing this compromise legislation to the floor. In particular, I would like to express my appreciation and gratitude to the Committee on Public Works for its foresight in coming to grips with a matter of great importance to San Diego.

H.R. 3282 contains an authorization of funds which will give the San Diego region relief from a source of environmental pollution which presently it has no ability to control. This pollution, in the form of millions of gallons of untreated industrial and domestic sewage, flows daily uncontrolled from Tijuana, Mexico, across the international border into the United States contaminating the land and waters of San Diego and its neighboring cities. This sewage constitutes a daily hazard to the health and environment of southern California citizens and could erupt into a public health emergency at any time.

The city of San Diego is located in the most southwestern part of the United States. Its southern corporate boundary is coterminous with the California-Mexico border. Directly south of San Diego lies Tijuana, Mexico, whose northern limits are likewise coterminous with the international line. Since the 1930's Tijuana has grown from a small frontier outpost into a commercial/residential city of approximately 1 million inhabitants. And, because economic opportunity is greater in proximity to the United States than in Mexico's interior, its population is expected to more than double in the next 20 years.

Tijuana is well known throughout the western United States and Canada for its colorful sporting events, its cultural and scenic attractions, and its international shopping plazas. What is not as well known is this city, approximately equal in population to the seventh largest city in the United States, has neither a reliable sewage collection system nor a sewage treatment facility. Moreover, only about 45 percent of Tijuana's population is, or can be, currently connected to the city's sewerage system. The balance either use septic tanks or have no system of sewage disposal at all. Yet, despite this lack of connections, Tijuana's system currently collects approximately 18 million gallons per day [MGD] of sewage. A combination of anticipated population increase, future connections to the collection system, and an increased water supply from the Colorado River could more than quintuple this current volume by the end of the century.

To compound the problem, it is not unusual for Tijuana's sewage collections and dispoasl system to fail completely. Not for hours, not for days, not even for months, but for years at a time. It is a matter of fact that San Diego has been receiving and disposing of Tijuana's sewage daily for the past 3 years because of such system failures.

You may wonder why we concern ourselves with the condition of a foreign city's sewers. Quite simply because San Diego is at a lower elevation than Tijuana. In addition, for a good part of the year, the Pacific Ocean currents flow northward along the Mexican coastline to California shores. Be assured, Mr. Chairman, were it not for these facts of municipal infrastructure and geography, Mexican sewage would be of no concern to San Diego. But the facts are inescapable. And their consequence is millions of gallons of raw sewage pouring daily, uncontrolled, onto the land and into the sea, crossing the border from Mexico to pollute and contaminate nearby U.S. valleys, rivers, and seashores.

For half a century, Federal, State, and local agencies have struggled with this problem. American Presidents have repeatedly urged Mexican Presidents to resolve this historic problem. The State Department has worked diligently with the Mexican foreign ministry to execute agreements which will mitigate the pollution hazard. Yet, despite long-term efforts by both countries, the problem only increases in severity. And candidly Mr. Chairman, the citizens of San Diego and its nearby communities who are forced to live daily with the pollution which flows from Mexico, grow impatient with the pace of a diplomatic search for a permanent solution.

San Diego is convinced that if this problem is to be solved, the initiative must come from the American side of the border. We also believe that the control of pollution which emanates from Mexico is the responsibility of the United States.

Let me set the background of our request. Since the 1930's San Diego and its environs have suffered pollution from Tijuana sewage. During the early years, the Mexicans built rudimentary facilities which were regularly overwhelmed by increasing demands.

In 1965, a Band-Aid effort took the form of a 20-year service agreement between the United States and Mexico. The two nations agreed that the city of San Diego would accept sewage from Tijuana into the city's Metropolitan Sewer System [Metro] under emergency conditions. The reason for this pact was to avert serious health and environmental problems in both countries due to the discharge of large quantities of Mexican sewage in the two border communities or into the Pacific Ocean near the international boundary.

During the first 10 years of the agreement, San Diego treated Mexican sewage on an average of 26 days per year. However, in the midseventies the usage increased dramatically. In 1976, Tijuana sewage was treated 90 days and rose to 253 days in 1978. For the past 3 years San Diego has treated Mexican sewage for 365 days each year. In effect, there has been and is a permanent emergency in the Tijuana sewage system. As a consequence, San Diego is collecting, treating, and disposing of nearly 80 percent of Tijuana's daily sewage load on a continuing basis.

While this daily treatment of Mexican sewage has been a burden, consider the alternative. If Tijuana's system were fully operational, it would pump approximately 18 million gallons a day of untreated sewage into the Pacific Ocean surf a few miles south of the border. The local U.S. ocean shoreline has been spared the major pollution and contamination which surely would result from the discharge of such enormous quantities of untreated sewage only because of Tijuana's permanent emergency. Under the emergency condition, San Diego, because of contractual obligations and self-interest, receives into its system 13 million gallons of Mexican sewage daily for treatment and disposal. Tijuana pumps the balance of its daily flow, 5 MGD, into the ocean a short distance below the border. Believe me when I say, it is not difficult to locate this discharge point on the Tijuana coastline. This joint effort, the treatment by San Diego of 13 MGD, and the raw discharge of 5 MGD by Tijuana, constitutes Tijuana's present total sewage disposal method.

When Tijuana cannot pump its daily 5 MGD into the surf because of failures in its system, the 5 MGD, following land contours, flows into the Tijuana River Valley on the U.S. side of the border contaminating and polluting farm acreage. Sewage also flows into the Tijuana Valley River, which carries it to the ocean, contaminating U.S. valley waterways along the way. For part of the year, ocean currents carry this raw sewage northward fouling U.S. shorelines. Records show there was a beach quarantine in effect directly north of the international border for 307 days in 1980, 219 days in 1982, and 309 days in 1983. In August 1983, approximately 7 miles of beach north of the border was quarantined.

In response to the intolerable situation, Mexico is unwrapping the latest band-aid. It has started construction of a 60 MGD pumping plant, a force main and a conveyance system which, when complete, will carry all of Tijuana's sewage to the present ocean discharge point 5.6 miles south of the border. The 60 MGD facility is designed to handle projected Tijuana sewage loads through 1993. Work on the pumping plant was halted in 1982 due to a peso devaluation and a change of national administration. It is approximately 50 percent complete. However, work continued on the force main and conveyance system and is said to be complete. But of course, without the pumping station the other work is useless. We are informed that some construction on the pumping plant has resumed, but it is uncertain when it will be complete. Moreover, U.S. engineers question whether the engineering, construction, and maintenance of the new system, when complete, will accommodate the flow for which it is designed.

Mexico speaks of a future system which will carry sewage from Tijuana to a treatment facility to be built approximately 18 miles south of Tijuana. It is said that in addition to eliminating the present pollution problem, this facility will also reclaim sewage for agricultural uses. Unfortunately, Mexico cannot say when this facility will be operational.

Mr. Chairman, this pollution hemorrhage cannot be stopped with band-aids. What is needed now is a tourniquet. San Diego has concluded that the tourniquet is a treatment and disposal facility constructed on the U.S. side of the border which is capable of accepting Mexican sewage. We are joined and supported in this conclusion by the U.S. Environmental Protection Agency and the State of California.

Again, I am pleased at the committee's positive response to this serious problem. The San Diego delegation is working on all fronts to remedy the Tijuana sewage hazard and I encourage my colleagues to support H.R. 3282 on the floor today.●

● Mr. McKINNEY. Mr. Chairman, as amended on May 1, 1984, by the House Subcommittee on Water Resources, H.R. 3282 included a provision which required the Environmental Protection Agency [EPA] to convene a management conference to formulate a comprehensive water quality restoration plan for estuaries affected by interstate-sourced pollution. Unfortunately, during its full committee markup this provision, known as the estuaries section, was dropped from the bill because of jurisdictional questions.

Today, however,it is my understanding that the House Committee on Merchant Marine and Fisheries and the House Committee on Public Works and Transportation have come to an agreement regarding the estuaries section. It also is my understanding that the section is ready to be reattached to H.R. 3282. Given the apparent resolution of the jurisdictional questions, I rise today in strong support of the inclusion of the estuaries section in H.R. 3282.

If enacted, this section wil have an historic effect on pollution control efforts in Long Island Sound. For the residents of New York, Connecticut, and thousands of others who each year use Long Island Sound for their livelihood and recreation, a comprehensive interstate pollution control plan has been long overdue. Numerous water quality problems occur each year, such as the closure of shellfish beds and periodic prohibitions on swimming. Yet, disagreements over State jurisdiction and responsibility have always stood in the way of progress.

While it is generally accepted that enactment of the Clean Water Act and subsequent construction of sewage treatment plants have resulted in improved water quality in many parts of Long Island Sound, documentation of these improvements is limited. The last soundwide investigation conducted was in 1972 by the National Oceanic and Atmospheric Administration; and, in Connecticut, no surface water testing outside of beaches and shellfish areas is done at all. Therefore, today no one really knows just how clean or dirty the sound is. Exacerbating this problem, the National Marine Fisheries Service, the U.S. Coast Guard, the Interstate Sanitation Commission, the Army Corps of Engineers, Connecticut and New York and two regional offices of the EPA share authority over the sound. In the past everyone's efforts to deal with the sound's very real pollution problems were sabotaged by the resulting bureaucratic snarl.

In contrast to the current makeshift and often contradictory Long Island Sound management policy, enactment of the estuaries section and the subsequent establishment of an EPA conference would lay the firm groundwork for a coordinated water quality scheme. The interstate conference would be charged with: First, developing an inclusive master plan for the sound; second, coordinating and implementing the master plan; third, recommending priority corrective actions and compliance schedules; and fourth, monitoring the estuary to determine the success of the master plan.

On September 30, 1983, and again on March 2, 1984, I wrote to the Public Works and Transportation Committee outlining the need for an EPA conference to help untangle the interstate management problems impeding a coordinated pollution control strategy for Long Island Sound. Each letter was cosigned by the Connecticut and Long Island House delegations, as well as by Representatives RICHARD OTTINGER and HAMILTON FISH. I was pleased to learn that on May 1, 1984, the Subcommittee on Water Resources approved a Clean Water Act reauthorization package in which Long Island Sound was given priority consideration under the estuaries provision.

I am hopeful that the interstate cooperation which was so evident during our work on behalf of the sound will carry over into the management conference. The estuaries provision is a crucial addition to existing water pollution law; and one which promises to be instrumental in maintaining the biological integrity of one of the Northeast's primary water resources—Long Island Sound.●

● Mr. SMITH of Iowa. Mr. Chairman, I want to thank the distinguished chairman, Mr. ROE, for supporting section 42 in the bill. This grant brings justly deserved relief to the citizens of the largest metropolitan area in Iowa whose 11 local government jurisdictions have worked diligently over the past 13 years to develop planning and preliminary construction on an areawide sewer system that would meet EPA standards. Because of a cap on State funds, the proposed 5-year construction project scheduled to begin in fiscal year 1983 would have had to be extended at least another 4 years resulting in huge increases in construction costs and unacceptable burden for citizens of the area in the form of sewer user fees.

I hope the Senate will pass the bill and the President will sign it.●

● Mr. FAUNTROY. Mr. Chairman, I rise in support of the committee amendment in the nature of a substitute offered to H.R. 3282, the Water Quality Renewal Act. My colleagues House Public Works Chairman JAMES HOWARD and Water Resources Subcommittee Chairman ROBERT ROE are to be commended for working out a compromise with a coalition of environmental groups so as to ensure that the Clean Water Act is not weakened.

The Clean Water Act has been one of the most effective pieces of environmental legislation this body has ever passed. Many rivers and lakes have been restored and fish are returning to waters that had previously been polluted. The jurisdiction I represent, the District of Columbia, has directly benefited from the Clean Water Act. Fifteen years ago the Potomac River was dying. Today, thanks to the funding and requirements of the Clean Water Act, the Potomac River is on its way back to environmental health—District of Columbia's youth can once again go fishing in their own city and can safely eat the fish they catch.

H.R. 3282 would reauthorize many of the programs of the Clean Water Act through fiscal year 1988, increasing the authorization for sewage treatment construction grants from $2.4 billion to $2.9 billion in fiscal year 1985 and $3.4 billion in each of fiscal years 1986 through 1988. It also increases the Federal share of treatment plant construction costs; establishes a new program to control nonpoint source pollution such as runoff from fields or streets; extends certain deadlines for industrial compliance with Clean Water Act standards; establishes a new program to clean up toxic hot spots—waters which will not meet water quality standards due to toxic pollution—and expands the Clean Lake Program.

The committee compromise amendment will qualify H.R. 3282 so that industrial discharge permits, which are extended by the bill from 5 to 10 years, can be adjusted to reflect changes in water quality standards. It also eliminates Federal funding for collector sewers which many fear could only exacerbate residential sprawl. Finally it limits exemptions granted to integrated pretreatment facilities, and the electroplating and mining industry, and eliminates the bill's exemption from certain pollution standards for two pulpmills in Alaska.

Mr. Chairman, we can not retreat from our efforts to control water pollution. I urge my colleagues to support the committee amendment to H.R. 3282.●

● Mr. JEFFORDS. Mr. Chairman, I rise in support of the committee's substitute amendment. I applaud the efforts of all those involved in forging this compromise to assure the effective continuation of one of this country's most farsighted and successful environmental laws. I commend the committee for presenting this clearly bipartisan substitute.

Clean water as a national policy and goal enjoys broad bipartisan support, as demonstrated in national polls. This package of strengthening provisions to H.R. 3282 responds to this overwhelming public support.

The committee had a tough assignment. There are many who feel that we have gone too far in our attempts to clean and protect our Nation's drinking supplies, rivers, lakes, and streams. Somehow they consider it bad for business. Well, in Vermont water pollution is bad business. Putting aside the obvious health benefits of clean water, the recreational and tourism benefits of clean water in my State are enormous! On top of this, clean drinking supplies and the beauty of our lakes and streams add to the high quality of life in Vermont which attracts many new residents and businesses to the State each year.

This substitute amendment reflects the commitment of the committee to present the full House with an effective and strong renewal of the Federal Water Pollution Control Act. There willingness to compromise is a testiment to this commitment. I urge all my colleagues to support this amendment and pass this very important legislation.●

Mr. ROE. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I just want to close. I believe we have covered all of the amendments and I think we have covered all the colloquy, at least that the committee is aware of.

I would like to commend, of course, again and not to take extra time—but then you are supposed to have some roses while you are alive—ARLAN STANGELAND, who is my counterpart, who has done a marvelous job in working with us on this bill—this is only the first of a series of bills we are working on—together with GENE SNYDER, our distinguished ranking member on the Republican side, who has done a super job, and our own chairman, JIM HOWARD, of the full committee. But I think we would be remiss as we are many times around here that when Members get all the encomiums for the great work that they have done and accomplished, but somehow they forget that there is an extraordinary—what would you say—staff that is involved to get the work done.

I would like to commend the names of some of our members who are on the staff who have done such a good job. Errol Tyler, Gayle Chestnut, John Doyle, Craig DeRemer—he has his good suit on today—Charlotte Miles, Kathy Guilfoy, Bob Gergman, and Dave Mendelsohn, just to say but a few, and of course our two chief counsels on both sides of the aisle.

I think we ought to give those members of the staff a great round of applause for the work they did on this bill.

Now when we close debate, before we hear from the distinguished gentleman from Minnesota, I hope that we will now achieve a rousing responding vote in favor of this legislation so that we can get the Clean Water Act underway.

Mr. STANGELAND. Mr. Chairman, will the gentleman yield?

Mr. ROE. I yield to the gentleman from Minnesota.

Mr. STANGELAND. I thank the gentleman for yielding.

Mr. Chairman, I would like to associate myself with the gentleman's remarks.

Someone said earlier that hundreds of hours have been spent on this bill. I think the gentleman spent hundreds of hours and weeks on this bill, not just hundreds of hours totally.

I do also want to join with the gentleman in commending the diligence and the hard work of the staff, because as the gentleman said, as Members of Congress, we cannot do it alone, we need that staff support. The gentleman's staff, our staff, have done an excellent job. I think we have crafted a piece of legislation here that can go out of this House in a tide of glory.

I thank the gentleman.

Mr. **ROE**. I thank the gentleman for his comments.

The **CHAIRMAN** pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from New Jersey [Mr. ROE], as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The **CHAIRMAN** pro tempore. Under the rule, the Commitee rises.

□ 1715

Accordingly, the Committee rose, and the Speaker having resumed the chair, Mr. KAZEN, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 3282) to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes, pursuant to House Resolution 522, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The **SPEAKER**. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The **SPEAKER**. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The **SPEAKER**. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. **FRENZEL**. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The **SPEAKER**. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 405, nays 11, not voting 17, as follows:

[Roll No. 267]

YEAS—405

Ackerman
Addabbo
Akaka
Albosta
Alexander
Anderson
Andrews (NC)
Andrews (TX)
Annunzio
Anthony
Applegate
Archer
Aspin
Badham
Barnard
Barnes
Bateman
Bates
Bedell
Beilenson
Bennett
Bereuter
Berman
Bethune
Bevill
Biaggi
Bilirakis
Bliley
Boehlert
Boggs
Boland
Boner
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Breaux
Britt
Broomfield
Brown (CA)
Brown (CO)
Broyhill
Bryant
Burton (CA)
Byron
Campbell
Carney
Carper
Carr
Chandler
Chappell
Chappie
Clarke
Clay
Clinger
Coats
Coelho
Coleman (MO)
Coleman (TX)
Collins
Conable
Conte
Conyers
Cooper
Corcoran
Coughlin
Courter
Coyne
Craig
Crockett
D'Amours
Daniel
Darden
Daschle
Daub
Davis
de la Garza
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
Donnelly
Dorgan
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dyson
Early
Eckart
Edgar
Edwards (AL)
Edwards (CA)
Edwards (OK)
English
Erdreich
Evans (IA)
Evans (IL)
Fascell
Fazio
Feighan
Ferraro
Fiedler
Fields
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Fowler
Frank
Franklin
Frenzel
Frost
Fuqua
Garcia
Gaydos
Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gore
Gradison
Gramm
Gray
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hall, Ralph
Hall, Sam
Hamilton
Hammerschmidt
Hance
Hansen (UT)
Harkin
Harrison
Hartnett
Hatcher
Hawkins
Hayes
Hefner
Heftel
Hertel
Hightower
Hiler
Hillis
Holt
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Ireland
Jacobs
Jeffords
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kaptur
Kasich
Kastenmeier
Kazen
Kemp
Kennelly
Kildee
Kindness
Kleczka
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach
Leath
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin
Levine
Levitas
Lewis (FL)
Lipinski
Livingston
Lloyd
Loeffler
Long (LA)
Long (MD)
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Mack
MacKay
Madigan
Markey
Marriott
Martin (IL)
Martin (NC)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McHugh
McKernan
McNulty
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Mineta
Minish
Mitchell
Moakley
Molinari
Mollohan
Montgomery

Moody
Moore
Moorhead
Morrison (CT)
Morrison (WA)
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nowak
O'Brien
Oakar
Oberstar
Obey
Olin
Ortiz
Ottinger
Owens
Oxley
Packard
Panetta
Parris
Pashayan
Patman
Patterson
Pease
Penny
Pepper
Perkins
Petri
Pickle
Porter
Price
Pritchard
Pursell
Quillen
Rahall
Rangel
Ratchford
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Roemer
Rogers
Rostenkowski
Roth
Roukema
Rowland
Roybal
Rudd
Russo
Sabo
Savage
Sawyer
Schaefer
Scheuer
Schneider
Schroeder
Schulze
Schumer
Seiberling
Sharp
Shaw
Shelby
Shumway
Shuster
Sikorski
Siljander
Simon
Sisisky
Skeen
Skelton
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny
Smith, Robert
Snowe
Snyder
Solarz
Solomon
Spence
Spratt
St Germain
Staggers
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Sundquist
Swift
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traxler
Udall
Valentine
Vander Jagt
Vandergriff
Vento
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weaver
Weber
Weiss
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Williams (MT)
Williams (OH)
Wilson
Winn
Wirth
Wise
Wolf
Wolpe
Wright
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Young (MO)
Zschau

## NAYS—11

Bartlett
Burton (IN)
Cheney
Crane, Daniel
Crane, Philip
Dannemeyer
Lungren
Marlenee
Nielson
Paul
Stump

## NOT VOTING—17

AuCoin
Brooks
Dixon
Dymally
Emerson
Erlenborn
Hall (IN)
Hansen (ID)
Kogovsek
Lewis (CA)
McGrath
McKinney
Mrazek
Rose
Sensenbrenner
Shannon
Wortley

□ 1730

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

98th Congress } HOUSE OF REPRESENTATIVES { Report
2d Session } { 98-827

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# WATER QUALITY RENEWAL ACT OF 1984

June 6, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. Howard, from the Committee on Public Works and Transportation, submitted the following

# REPORT

together with

## ADDITIONAL AND SUPPLEMENTAL VIEWS

[To accompany H.R. 3282]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 3282) to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

The existing Water Pollution Control Program stems from the complete rewrite of prior water pollution control laws which was incorporated in the Federal Water Pollution Control Act Amendments of 1972. The 1972 Act established as goals the reduction and ultimately the elimination of discharges of pollutants from municipal sewage systems and industrial plants. An interim goal of July 1, 1983, was established to achieve, wherever attainable, fishable and swimmable water quality in all of the rivers, lakes and streams of the nation.

The 1972 Act established two primary mechanisms for the accomplishment of these goals. First, all industrial and municipal dischargers were required to treat their wastes to clearly definable minimal levels based on best practicable and best available technol-

31-006 O

ogies. Beyond those minimum levels, dischargers were required to comply with any more stringent state or Federal requirements based on receiving water quality standards. These requirements were to be enforced nationwide through permits required for every point source discharging into navigable waters.

The technology-based minimum treatment requirements were to be imposed in increasingly stringent steps. For industries, effluent limitations reflecting application of the best practicable control technology currently available were to be achieved by 1977. The corresponding 1977 effluent limitation for municipalities was secondary treatment. By 1983, industries were to achieve effluent limitations corresponding to the best available technology economically achievable.

The second mechanism was a significantly strengthened program of grant assistance to municipalities for the construction of sewage treatment facilities to meet the requirements of the Act. The Federal share of eligible project costs was raised to 75 percent and $20.75 billion was authorized for grants, including reimbursement grants, for the construction of treatment facilities under the new law.

These two fundamental concepts have remained essentially the same since the 1972 Act, although there have been several additional amendments. The first of the important changes in the law were enacted in 1977. These were the "mid-course corrections" which had been contemplated since 1972. The 1977 amendments authorized an additional $25.5 billion for the Construction Grants Program. In addition, they established a program for encouraging innovative and alternative approaches to wastewater treatment and initiated a mechanism for turning over more of the management of the grants program to the states. The 1977 Act also placed greater emphasis on the control of toxic pollutants and imposed new dates of required best available technology and best conventional technology compliance for toxic pollutants, conventional pollutants, and other pollutants which fell into neither of these categories. For all toxic pollutants referred to in Table 1 of Committee Print 95-30 of the Committee on Public Works and Transportation of the House of Representatives (the so-called priority pollutants), the compliance date was set at not later than July 1, 1984. For all toxic pollutants listed pursuant to the provisions of section 307(a) of the Act, compliance with effluent limitations was required not later than three years after the date of establishment of the effluent limitations. For conventional pollutants, the compliance date was set at not later than July 1, 1984. For other pollutants which fall neither within the conventional or toxic categories, the compliance date was set at not later than three years after the date of the establishment of effluent limitations, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.

The other significant changes to the 1972 Act occurred in the 1981 amendments, which related primarily to the Construction Grants Program. In the 1981 Act, the Federal share was reduced from 75 to 55 percent beginning in fiscal year 1985. In addition, eligible categories for grant assistance were limited to treatment works, associated interceptor sewers and correction of inflow/infiltration problems also beginning in fiscal year 1985. Other items such as problems associated with combined sewer overflows and construction and repair of collector sewers, were eliminated from grant eligibility. This was tempered somewhat by a provision which allowed grants to be made for these otherwise ineligible categories in an amount not to exceed 20 percent of a state's allotment as determined by the Governor. Also, grants for planning and design were eliminated and replaced by a provision which provided for an allowance for planning and design costs when a step three construction grant was approved. In order to preserve some continuity in the program, the new provisions with regard to the amount of the Federal grant share were not made applicable to projects which received construction grants prior to the end of fiscal year 1984, but only for the new eligible categories.

The 1972 Act has resulted in significant improvement in the control of discharges of pollutants into the nation's waters. Studies indicate that at the very least, pollution loads have not increased even though substantial increases in population and industrial discharges have occurred. However, the program has not performed as well as expected due primarily to uncertainties in funding, insufficient levels of funding, and delays in promulgation of effluent standards for industrial dischargers.

H.R. 3282, as reported by the Committee, is designed to correct difficulties existing with regard to the program and to significantly improve the effectiveness of the water pollution control program. The bill provides for an increase in the total authorization for construction grants, a separate grant system to enable states to establish revolving funds to assist communities within the state in constructing needed sewage treatment facilities, reinstatement of combined sewer overflow projects and collector sewers as eligible categories for grant assistance, an increase in the Federal share for the construction of publicly owned treatment works to 65 percent, and the extension of compliance dates for the achievement of best available technology and best conventional technology, to reflect the delays which have occurred in the promulgation of the effluent limitations.

In developing this legislation, the Committee had the benefit of information presented by 184 witnesses in 15 days of hearings during the 98th Congress, as well as additional hearings during the 97th Congress. These witnesses included Members of Congress, representatives of State and local governments, industry and environmental organizations, and other interested individuals and organizations. A truly comprehensive hearing record was established and was reviewed carefully by the Subcommittee on Water Resources and the full Committee. The Committee believes that the bill, as reported, represents a balanced approach designed to address problems associated with the water pollution control program and to improve its effectiveness.

Two provisions in the introduced bill do not appear in the reported bill. These are original section 6, which established specific criteria for changes in water quality standards, and section 10, which related to the section 404 program. Section 404 regulates the discharge of dredged or fill materials into waters of the United States.

The Committee believes that it is unwise from a legislative point of view to codify regulations or parts of regulations except in the most unusual circumstances. This is especially true with regard to a program such as the water pollution control program, where, of necessity, some discretion must be left to the administering agency. Standards and conditions may be established through legislation, but it is not possible to address in detail every contingency which might arise following enactment of the legislation. It must be left to the administering agency and the courts, combined with the continuing oversight responsibility of the Congress, to ensure that the program is being implemented in accordance with Congressional intent. The interstices of the overall regulatory scheme must, of necessity, be left to be filled in through the executive, administrative, and judicial processes.

It is for these reasons that the Committee decided to delete the provisions in the introduced bill regarding water quality standard regulations and the application and content of section 404(b)(1) guidelines.

Section 6 of the introduced bill codified certain provisions of earlier regulations relating to the establishment by the States of water quality standards. This provision was included as a response to a proposed new regulation which many were concerned would have made it easier to downgrade water quality standards. Following introduction of the bill, the Environmental Protection Agency revised its original proposal and promulgated water quality standards regulations in November of 1983, which the Committee regards as satisfactory. The changes made in the original proposed regulatory changes are an example of how public comment and Congressional oversight can work effectively to ensure that the intent of the basic law is maintained. In view of the new regulations, the Committee feels it is no longer necessary to retain the specific provisions originally contained in section 6 of the introduced bill. The Committee will, however, as it has done in the past, continue to monitor the actions of the Environmental Protection Agency with regard to these and other regulations and to fully exercise its oversight responsibility.

With regard to section 10 of the introduced bill relating to section 404, the Committee made the same decision. Section 404 provides that the Secretary of the Army may issue permits for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Each such disposal site is to be specified for each permit by the Secretary through the application of guidelines developed by the Administrator in conjunction with the Secretary. These are the section 404(b)(1) guidelines. Section 10 of the introduced bill required the guidelines developed by the Administrator to prohibit specification of a disposal site unless the Secretary of the Army determines that discharge of dredged or fill material at the site will not, by itself or in combination with other pollutants, have an unacceptable adverse effect on the aquatic environment, and that there is no practicable alternative to the proposed discharge (taking into account economic and social costs and technological feasibility) which will have less adverse effect on the aquatic environment and will not have other significant adverse environmental consequences. Section 10 also set forth requirements for interagency coordination of permits under section 404.

Among other things, the Committee was concerned that paraphrasing or excerpting portions of these guidelines could create confusion about the effectiveness of those portions of the guidelines which were not paraphrased or excerpted. Incorporating only a part of the guidelines in the statute could well lead to administrative and judicial interpretations that less weight should be given to those requirements not included specifically. It was therefore decided that the better course of action was to not address portions of the guidelines in the legislation, but rather to leave them as they are.

The existing section 404(b)(1) guidelines promulgated in December of 1980, contain a wide range of provisions designed to preserve the integrity of the nation's waters. For example, the guidelines provide that it is a fundamental precept that dredged or fill material should not be discharged into the aquatic ecosystem unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact, either individually or in combination with known and/or probable impacts of other activities affecting the ecosystem of concern. They provide that no discharge of dredged or fill material, except as provided under section 404(b)(2), which relates to navigation, shall be permitted if there is practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmetal consequences. An alternative is considered practicable if it is available and capable of being done after taking into consideration cost, existing technology and logistics, in light of overall project purposes. In addition, no discharge of dredged or fill material is to be permitted if it causes a violation of any applicable State water quality standard, causes significant degradation of the waters of the United States, and all appropriate and practicable steps have not been taken which would minimize potential adverse impacts of the discharge on the aquatic ecosystem.

The Committee feels that the principles underlying the section 404(b)(1) guidelines are sound. The deletion of section 10 should in no way be construed as an indication that the Committee disagrees with the basic principles contained in these guidelines. As in the case of the water quality standards regulations, the Committee will continue to monitor the situation and to fully exercise its oversight responsibility.

With regard to section 10(b) of the introduced bill, which established administrative procedures for review of decisions on permits, the Committee has determined that this is best left to the agencies involved. The Committee would urge, however, that steps be taken to ensure that comments of interested Federal agencies on permit applications be given full consideration and that provision be made for review of controversial applications at the Washington level, where appropriate.

Section 316(a) of the Federal Water Pollution Control Act authorizes a thermal discharge limitation less stringent than the limitation proposed for a facility if the lesser standard assures "a balanced, indigenous population of shellfish, fish and wildlife" in the affected body of water.

H.R. 3282 does not modify section 316(a). It has been suggested, however, that the statute could be interpreted to contradict Congress' intent. A case in point is New Jersey Central Power and Light Company's Oyster Creek Nuclear Generating Station in Ocean County, New Jersey. The Committee understands that prior to the plant's construction the stream which serves as its discharge canal was a low flow, brackish creek. Water quality and aquatic life productivity were both poor. Fish would not reproduce in the creek and mortality rates were high.

In constructing the plant the stream was dredged and modified extensively. This permanently changed the salinity and temperature of the stream. Unlike its historic character, the stream now has a thriving, diverse fish and shellfish community. Nevertheless, it has been suggested that this community is not "indigenous" under section 316(a), and the plant, therefore, is ineligible for a variance under the statute.

The Committee does not agree with that suggestion. The Committee believes that a thermal discharge variance under the statute is fully consistent with the conditions noted in the example described above.

## Section-by-Section Analysis

### SECTION 1

Section 1 provides that this Act may be cited as the Water Quality Renewal Act of 1984.

### SECTION 2

This section continues through Fiscal Year 1988 authorizations at existing levels for a number of programs in the Water Pollution Control Act as follows:

$22,770,000 per fiscal year for research activities and investigations on the causes and effects of water pollution.

$3 million per fiscal year for the training of personnel who operate and maintain treatment plants.

$1,500,000 per fiscal year for forecasting the supply of and demand for occupational categories needed in the water pollution control field.

$75 million per fiscal year for grants to State and interstate agencies to assist in administering programs for water pollution control.

$7 million per fiscal year for grants to educational institutions for programs to train personnel in the operation of water pollution control facilities and to provide scholarships for students entering the field of operation and maintenance of publicly owned treatment works.

$100 million per fiscal year for grants under section 208 for developing and operating areawide waste treatment management planning processes.

$100 million per fiscal year for the rural clean water program.

$100 million per fiscal year to implement interagency agreements for the utilization of other Federal laws to assist in controlling water pollution.

$30 million per fiscal year for the Clean Lakes Program, which provides for the restoration of the quality of water in lakes.

$160 million per fiscal year for general administration of the Federal Water Pollution Control Act by the Environmental Protection Agency.

### SECTION 3

This section increases the authorization level for the Construction Grants Program from its present level of $2.4 billion per fiscal year. The new amounts are $2,900,000,000 for fiscal year 1985, and $3,400,000,000 per year for fiscal years 1986, 1987 and 1988.

### SECTION 4

This section extends the compliance dates for achievement of best available technology and best conventional technology.

Subsection (a) of section 4 extends the compliance date for all toxic pollutants referred to in Table 1 of Committee Print 95-30 of the House Committee on Public Works and Transportation (the priority pollutants). Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date such effluent limitations are established.

Subsection (b) of section 4 extends the compliance date for all other toxic pollutants which may be listed under 307(a). Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date of establishment of any applicable effluent limitations.

Subsection (c) of section 4 extends the compliance date for application of best conventional technology (for conventional pollutants—biological oxygen demand, fecal coliform, suspended solids and pH) from July 1, 1984, to July 1, 1987.

Subsection (d) of section 4 extends the requirements for best available technology for all other pollutants. Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date the effluent limitations are established.

Subsection (e) of section 4 requires the Administrator of the Environmental Protection Agency to promulgate final regulations establishing effluent limitations for direct dischargers and limitations requiring pretreatment for all of the toxic pollutants referred to in Table 1 of Committee Print 95-30 in accordance with the following schedule:

| Category: | *Date by which the final regulation shall be promulgated* |
|---|---|
| Foundries | June 30, 1984. |
| Inorganic chemicals (phase II) | June 30, 1984. |
| Nonferrous metals forming | Oct. 31, 1984. |
| Organic chemicals and plastics and synthetic fibers | Feb. 28, 1985. |
| Pesticides | Nov. 30, 1984. |

*Date by which the final regulation shall be promulgated—Continued*

| | |
|---|---|
| Plastics molding and forming | Sept. 30, 1984. |
| Nonferrous metals (phase II) | Nov. 30, 1984. |

### SECTION 5

This section provides for the development and implementation of individual control strategies to achieve compliance with applicable water quality standards where it is determined that such compliance will not result from the application of best available technology and best conventional technology.

Subsection (a) requires the Administrator, in cooperation with the States, and not later than one year after the date of enactment of this legislation, to publish in the Federal Register a list of all navigable waters in each State for which the Administrator does not expect the applicable water quality standard to be achieved after the requirements for best available technology and best conventional technology are met, due entirely or substantially to discharges from point sources of toxic pollutants listed pursuant to section 307(a). For each segment of the waters included on this list, the Administrator is to determine the specific point sources discharging toxic pollutants which are believed to be preventing or impairing water quality, and the amount of each toxic pollutant discharged by each source. At a minimum, the Administrator is to consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after the date of enactment of the subsection.

Not later than one year after the date of publication of the list, the Administrator, in cooperation with the States, is to issue proposed regulations setting forth for each listed segment of the navigable waters an individual control stragegy. Each strategy shall produce a reduction in the discharge of toxic pollutants from point sources identified by the Administrator, through the establishment of effluent limitations and water quality standards which reduction is sufficient, in combination with other controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy.

Subsection (b) amends the citizens suits provision of section 509 of the Act to allow interested persons to bring a legal action for review of the Administrator's promulgation of individual control strategies under section 6.

### SECTION 6

Subsection (a) of this section increases the maximum amount of a civil penalty for violating certain provisions of the Act from $10,000 per day to $20,000 per day.

Subsection (b) provides that the Federal Water Pollution Control Act shall not be construed as requiring a State to have a civil penalty for violations described in section 309(d) which has the same monetary amount as the civil penalty establishment by this section. This relates to the requirement in the Act that a State have adequate enforcement and penalty provisions in order to assume management of the National Pollution Discharge Elimination System under section 402 of the Act.

### SECTION 7

This section directs the Administrator, in cooperation with interested States and Federal agencies, to study and monitor the effects on the quality of navigable waters attributable to the impoundment and discharge of water by dams. The results of this study, together with recommendations for the control of such impoundment and discharges, shall be submitted to Congress not later than December 31, 1985.

### SECTION 8

This section adds a new section 319 to Title III of the Federal Water Pollution Control Act, to provide for nonpoint source control implementation programs.

Subsection (a) of new section 319 provides that the Governor of each State shall prepare and submit to the Administrator for his approval a report which:

> Identifies those portions of the navigable waters within the State which, as a result of pollution from nonpoint sources in whole or in part, are not meeting applicable water quality standards or the goals or requirements of the Act;
>
> Identifies those categories and subcategories of nonpoint sources which add significant pollution to each portion of the navigable waters identified under the preceding provision, in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;
>
> Identifies and describes State and local programs for controlling pollution added from nonpoint sources to and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance;
>
> Describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control nonpoint sources of pollution.

Subsection (b) of new section 319 provides that the Governor of each State shall prepare and submit to the Administrator for his approval:

> A plan which the State proposes to implement, in the first four fiscal years beginning after the date of submission of the plan, for controlling pollution from nonprofit sources;
>
> A report which identifies each department, agency, or instrumentality of the United States, and each department, agency, or instrumentality of the State, which is likely to be engaging in, supporting or providing financial assistance for any activity or program in the State which, if carried out, would be inconsistent with implementation of the State's plan for controlling nonpoint sources. This report is to recommend to the Administrator methods by which Federal departments could modify administration of their activities or programs and describe meth-

ods by which the State intends to modify administration of its activity or program so that the activity or program is consistent with and assists the State in implementation of its plan for control of nonprofit sources.

Each plan proposed for implementation must specify:

For those portions of navigable waters significantly affected by nonpoint pollution, the particular portion of navigable waters and the land area contributing such pollution with respect to which the State plans to assist, encourage, or require implementation of best management practices and measures in the first four fiscal years beginning after the date of submission of the plan;

The order in which, and the schedule under which, the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years;

The categories and subcategories of nonpoint sources of pollution with respect to which the State plans to assist, encourage, or require implementation of such practices and measures;

The best management practices and measures, the implementation of which the State plans to assist, encourage, or require;

The methods by category and subcategory of sources of pollution, which the State plans to use to assist, encourage or require implementation of such practices and measures; and

Sources of Federal and other assistance which will be available for supporting implementation of such practices and measures and the purposes for which the assistance will be used in each of the fiscal years.

Each plan submitted by a State under this subsection shall be accompanied by a certification of the Attorney General of the State, or the chief attorney of any State water pollution control agency, that the laws of the State provide adequate authority to implement the plan or, if adequate authority does not exist, a list of the additional authority which will be necessary to implement the plan.

The implementation schedule must establish for each category and subcategory of nonpoint sources of pollution an expeditious period for implementation of best management practices and measures and shall include the estimated dates for implementation of these practices and measures.

In developing and implementing a plan under this section, a State is required, to the maximum extent practicable, to utilize local, public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

The States are directed, to the maximum extent practicable, to develop and implement nonpoint source control plans on a watershed-by-watershed basis.

Subsection (c) of new section 319 requires that any report required by subsection (a) and any plan and report required by subsection (b) shall be submitted to the Administrator during the 270-day period beginning on the date of enactment of this legislation, except that, upon request of the Governor, the Administrator shall extend this period for not to exceed an additional 270 days.

If the Governor of a State does not submit the report required by subsection (a) during such period (the report describing existing

State programs and practices), the Administrator is to prepare the report for the State.

Subsection (d) of new section 319 directs the Administrator to consolidate recommendations for modifications of activities and programs submitted by the States and submit these consolidated recommendations to the appropriate departments, agencies and instrumentalities of the United States. Each such department, agency or instrumentality, to the maximum extent practicable and consistent with existing law, must accommodate these recommendations and carry out its own activities and programs in a manner which is consistent with and will assist implementation of the State's nonpoint source pollution control plan.

Subsection (e) of new section 319 provides that, subject to paragraph 2, not later than 180 days after the date of submission of any report or plan under this section, the Administrator shall either approve or disapprove the report or plan as the case may be. The Administrator may also approve or disapprove a portion of a plan. If the Administrator does not disapprove a report, a plan, or a portion of a plan, in the 180-day period, it is deemed approved. Paragraph 2 provides that if, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies, the Administrator determines that the State plan or any portion of it is not likely to satisfy the goals and requirements of the Federal Water Pollution Control Act, that adequate authority does not exist or adequate resources are not available to implement the plan, or that the plan is not adequate to improve the quality of waters in the State, the Administrator is directed to disapprove the plan or portion of the plan with respect to which the Administrator makes his determination. The Administrator must notify the State of any disapproval and request specific revisions of the plan or portion of the plan necessary to obtain approval. Not later than 90 days after the date of this notification, the State must submit its revised plan to the Administrator for his approval.

Subsection (f) of new section 319 provides that, if a State fails to submit a plan or the Administrator does not approve a plan for the control of nonpoint sources of pollution, a local agency or organization which has expertise in, and authority to, control pollution resulting from nonpoint sources in any area of the State which the Administrator determines is of sufficient geographic size, may, with the approval of the State, request the Administrator to provide technical assistance to it in developing for such area a nonpoint source pollution control plan. The agency or organization must submit its plan to the Administrator for his approval. If the Administrator approves the plan, the agency or organization shall be eligible to receive financial assistance for implementation of the plan as if the agency or organization were a State.

Subsection (g) of new section 319 provides that, upon request of the State, the Administrator may provide technical assistance to the State in developing a nonpoint source pollution control plan.

Subsection (h) of new section 319 provides that, if any portion of the waters in a State which is implementing a plan approved under this section is not meeting applicable water quality standards because of pollution from nonpoint sources in another State, the State may petition the Administrator to convene, and the Administrator shall convene, a management conference of the involved States which contribute pollution resulting from nonpoint sources. If, on the basis of information available to him, the Administrator determines that a State is not meeting applicable water quality standards because of pollution from nonpoint sources from another State, the Administrator shall notity the States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification whether or not the State requests the conference. The purpose of the conference is to develop agreement among the States to reduce the level of pollution.

A State contributing significant pollution from nonpoint sources to another State must submit to the Administrator for his approval a nonpoint source pollution control plan to reduce the level of pollution, or, if it has an approved plan, the State must revise the plan to reduce the level of pollution entering the other State.

Subsection (i) of new section 319 provides for grants to States with approved plans for the purpose of assisting the States in implementing the plans. The Federal share of the cost of the plan shall not exceed 50 percent of the cost incurred by the States. However, where the Administrator determines that a significant number of non-Federal, non-State interests in a watershed area are willing and able to enter into agreements to participate in nonpoint source pollution control measures, the grant shall be not less than 50 percent and not more than 60 percent. This bonus grant—of up to 10 percent—is intended to provide a greater incentive for individuals and local organizations to work together to solve nonpoint source pollution problems. The phrase "significant number of interests" is intended to provide the administrators of this program with the flexibility to include landowners, farmers, conservation districts, national resource districts, or other suitable regional nongovernmental organizations which may be functioning within a watershed, regardless of the size of the interest.

The State must enter into agreements with the Administrator of the Environmental Protection Agency to assure that the State will maintain its aggregate expenditures for programs for controlling pollution added to the navigable waters in the State from nonpoint sources and for improving the quality of waters at or above the average level of such State expenditures in the two fiscal years preceding the date of enactment of this subsection.

Each State which receives a grant under this section must submit to the Administrator a written report which describes the activities and programs carried out in the State under the grant and the progress made by such State in meeting the schedule specified under its State plan.

No grant may be made in any fiscal year to a State which in the preceding fiscal year received a grant under this section, unless the Administrator determines that the State made satisfactory progress in meeting the schedule specified by the State in its submitted and approved plan.

Not more than 15 percent of the amount appropriated to carry out this section may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of the State.

Beginning with fiscal year 1987, the Administrator is authorized to give priority in making grants, and shall give consideration in determining the Federal share of any grant to any State which has included effective regulatory mechanisms in an approved State plan and has implemented such mechanisms in the preceding fiscal year. Such mechanisms shall include, but not be limited to, deadlines for implementation of best management practices and enforcement procedures to ensure implementation of the State's plan.

There is authorized to be appropriated to carry out this grant program not to exceed $150 million per fiscal year for fiscal years 1985 through 1989.

Not later than January 1, 1985, and each January 1 thereafter, the Administrator is to transmit to the Committee on Public Works and Transportation of the House and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of these waters.

The Administrator is to transmit to Congress a final report on the activities carried out under this section. This report, at a minimum, is to include:

> An analysis of the effectiveness of plans carried out under this section, and of the best management practices and measures utilized under those plans in controlling nonpoint sources of pollution;
>
> An analysis of the level of State participation in implementing such plan;
>
> Recommendations of the Administrator concerning future programs, including enforcement programs, for controlling pollution from nonpoint sources.

Not less than 5 percent of the funds appropriated to carry out this section shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency which are adequate to carry out this section.

## SECTION 9

Section 11 adds to section 101(a) of the Federal Water Pollution Control Act the statement that it is the national policy that plans for the control of nonpoint source pollution be developed and implemented in an expeditious manner, so as to enable the goals of the Act to be met through the control of both point and nonpoint sources of pollution. The intent of this section is to emphasize the importance of controlling nonpoint sources of pollution, together with point sources, so as to achieve the water quality goals of the Act.

## SECTION 10

Section 13 amends subsection 104(h) of the Federal Water Pollution Control Act to require the Administrator to submit a lake restoration guidance manual to this Committee and the Committee on

Environment and Public Works of the Senate. The manual, to be submitted not later than one year after date of enactment of H.R. 3282, shall establish procedures to guide future State and local efforts to improve water quality in lakes.

Subsection 104(h) of the Act currently authorizes the Administrator to enter into contracts with or make grants to public or private agencies for the purpose of developing and demonstrating new or improved methods for the prevention, removal, reduction, and elimination of pollution in lakes. As part of this effort, the Committee understands that EPA's Office of Research and Development has spent considerable time and resources on an evaluation of the effectiveness of lake quality improvement techniques. It was expected that a guidance manual would be developed based on this work. This has not been done. The Committee believes that a guidance manual will significantly assist future State and local efforts to improve lake quality. Because the bulk of the background work has been done, the Committee is confident that a year or less is sufficient time for EPA to complete and submit this manual.

### SECTION 11

Subsection (a) of section 11 amends section 201(g)(1) of the Federal Water Pollution Control Act by adding collector sewers and projects to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows to the list of categories which are eligible for Federal grant assistance.

Subsection (b) of section 11 amends section 201(n)(2) of the Act which provides grants to address water quality problems due to the impacts of discharges from combined storm water and sanitary sewer overflows into marine bays and estuaries by increasing the amount authorized from $200 million per fiscal year to $500 million per fiscal year.

Pollution resulting from combined sewer overflows is a severe problem in many parts of the country, particularly in older cities. One particular example is the discharges of untreated effluent as a result of sewer overflows into the Neponset River and Dorchester Bay and Boston Harbor in the Boston Metropolitan Area. In order to diminish the threat to public health posed by these discharges, the Committee expects funding priority under Section 15 to be used for combined sewer overflow improvement projects in this area.

### SECTION 12

Subsection (a) of this section amends section 202(a)(1) of the Federal Water Pollution Control Act by changing the basic 55 percent Federal construction grant share to 65 percent.

The Municipal Wastewater Treatment Construction Grant Amendments of 1981, P.L. 97-117, amended the Act to provide the Federal grant amount for eligible projects in the regular program to be 55 percent of the cost of construction beginning October 1, 1984. Since the passage of P.L. 92-500 in 1972, the basic Federal grant share has been 75 percent. The effect of subsection (a) of section 12 will be that the change as of October 1, 1984, will be from 75 percent to 65 percent.

Subsection (b) of section 12 amends section 202(a)(1) of the Act by adding projects to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows. This is the subsection which provides that projects which have received a step three construction grant before October 1, 1984, will continue to receive a Federal grant of 75 percent until completion.

Subsection (c) of section 12 provides that, in the case of any project for which an application for a grant has been made before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, the project shall still be eligible for grants of 75 percent of the construction cost.

Subsection (d) provides that the activated bio-filter feature for treatment works of the City of Little Falls, Minnesota, shall be deemed to be an innovative wastewater process and technique and shall be eligible for the increased grants which the Act makes available for innovative technology projects.

The Little Falls projects is designed to use activated bio-filters (ABSs) in its treatment system. ABFs have been used in wasterwater systems before, but not as they would be used in Little Falls. In Little Falls, the ABF component will be part of the second stage in a tricking filter system. The innovative classification is appropriate because there exists little or no performance data on the optimum loadings, sizing, and other considerations with which the application can be designed without some risk. There is no other situation of ABFs having been used exactly as is being proposed in the Little Falls treatment works. In additional, there is doubt about how the extreme cold of Minnesota winters will affect performance.

Subsection (e) of section 12 amends section 202(a)3) of the Act. This section authorizes the Administrator to make grants to fund all the costs of the modification or replacement of any facilites constructed with a grant made available for innovative technology if the Administrator finds that the facilities have not met design performance, unless the failure is attributable to negligence on the part of any person.

Subsection (e) amends this provision by providing that, in addition, the Administrator is authorized to make a grant to fund all the costs of the modification or replacement of biodisc equipment (rotating biological contractors) in any publicly owned treatment works if the Administrator finds that the equipment has not met design performance specifications, unless the failure is attributable to negligence on the part of any person, and if the failure has significantly increased capital or operating and maintenance expenditures.

### SECTION 13

Section 203(a) of the Federal Water Pollution Control Act requires each applicant for a grant to submit to the Administrator for his approval plans, specifications and estimates for each proposed project for the construction of treatement works for which a grant application is made. Section 13 amends this provision to provide that before taking final action on such plans, specifications and estimates, the Administrator must first enter into an agreement with the applicant which establishes and specifies to the extent practicable which items of the proposed projects are eligible for Federal payments under this section. Once this agreeement has been entered into, the Administrator may not refuse to make payments for the Federal share of those reasonable costs of any item specified in the agreement which are incurred on the project.

Under current law, once the Administrator approves a grant applicant's plans, specifications, and estimate, the approval constitutes a contractural obligation of the United States for payment of the Federal Government's proportional contribution to the project covered by the grant. Current Agency audit procedures permit construction grants to be obligated only for allowable costs. However, these costs are not determined until a final audit of the project grant is conducted. Thus, and EPA auditor is in a position to and often does reevaluate and override during the final audit process the previously approved allowable costs, despite the fact that the Agency had approved the plans and specifications for the project prior to obligation of the grant funds. This practice subjects grant recipients to a great deal of vulnerability during the audit process and leads, in some instances, to substantial and unplanned financial burdens for the grantee.

The purpose of section 13 is to emphasize and effectuate the Committee's intent that award to a grantee of a Title II wastewater treatment construction grant constitutes a binding contractual obligational of the Federal government. Where is the Administrator approves an agreed-upon specific project for grant funding, then under this provision the United States is contractually obligated to fund that project as it was approved, so long as the grantee acted in good faith and in accordance with the grant agreement and the costs are not in violation of Federal law. In this manner, the Agency's dealings with the States and with the grantees will be on a more reliable and business-like basis, with all parties knowing what costs are allowable for grant funding.

The Committee intends that the Administrator, in implementing section 13, will continue to review plans, specifications, and estimates to ensure that wastewater treatment projects are cost effective.

## SECTION 14

Subsection 14(a) amends Section 204(a)(1) of the Federal Water Pollution Control Act to require the Administrator, before approving sewage treatment construction grants for any project, to determine that either any required areawide waste treatment management plan under section 208 is being implemented for such area and the proposed treatment works are included in such plan or that reasonable progress toward implementation is being made.

Subsection 14 (b) amends Section 205(a)(2) of the Act and requires similar conformance with plans and reports in sections 303(e) and 305(b) of the Act.

Subsection 14(c) provides that the amendments made in subsections (a) and (b) of section 18 shall take affect two years after the date of enactment of this legislation.

Section 204 of the Act provides certain conditions that the Administrator must assure are met before making grants. It provides at present for projects receiving funding to be part of existing plans and in conformance with sections 303(e) and 305(b). The amendments in section 14 seek to provide additional assurance that consistent program progress will be maintained by focusing on implementation.

The 208 program provides for the development of areawide waste treatment plans. Grant monies under section 208 are to be made available to identify pollution problems and decide on a management plan to address the problems. Section 303(e) requires each State to have a continuing planning process. Section 305(b) requires submission by each State every two years of a report on the water quality situation for that State.

The Committee, by adopting the amendments in section 14, intends that the programs of areawide planning and consistency with plans and programs to meet the goals of the Act be pursued. The plans developed under section 208, for instance, are not to be static documents to be written and ignored. The Committee expects to see these plans implemented in order to meet the goals of the Act. Similar use is expected of 303(e) and 305(b) requirements.

### SECTION 15

Section 204(b)(1) of the Federal Water Pollution Control Act provides that, notwithstanding any other provisions of the Act, the Administrator shall not approve any grant for any treatment works unless he shall first have determined that the applicant has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction will pay its proportionate share of the costs of operation and maintenance of any waste treatment services provided by the applicant.

Section 15 amends this by providing that a system of user charges which imposes a lower charge for low-income residential users, as defined by the Administrator, shall be deemed to be a user charge system meeting the requirements of section 204, if the Administrator determines that the system was adopted after public notice and hearing.

### SECTION 16

Subsection (a) section 16 includes conforming amendments to section 205(c)(2) of the Federal Water Pollution Control At which provides for allotment of funds authorized to be appropriated for the Construction Grants Program, and specifies the amount allotted to each State, for fiscal years through fiscal year 1985. Subsection (a) adds fiscal years 1986, 1987 and 1988 so as to conform with section 3 of H.R. 3282 which extends and increases the authorizations for construction grants through fiscal year 1988.

Subsection (b) of section 16 amends section 205(e) of the Act so that it conforms with the extension of the construction grant authorizations in section 3 of H.R. 3282.

Section 205(e) provides that, for fiscal years 1978, 1979, 1980, 1981, 1982, 1983, 1984 and 1985, no state shall receive less than one-half of one percent of the total allotment under subsection (c) of section 205, except that in the case of Guam, Virgin Islands, American Samoa, and the Trust Territories, not more than thirty-three one-hundredths of one percent in the aggregate shall be allotted to all four of these jurisdictions. For the purpose of carrying out subsection 205(e) there are authorized to be appropriated, subject to such amounts as are provided in appropriation Acts, not to exceed $75,000,000 for each of fiscal years 1978, 1979, 1980, 1981, 1982, 1983, 1984 and 1985.

Subsection (b) of section 16 also adds fiscal years 1986, 1987 and 1988 to section 205(e) and changes the maximum amount available to Guam, the Virgin Islands, American Samoa and the Trust Territories from one-third of one percent to two-thirds of one percent in order to better meet their water quality needs.

Subsection (c) amends section 205(g)(1) of the Act so that it will conform with the extension of the Construction Grants Program in section 3 of H.R. 3282. Section 205(g)(1) authorizes the Administrator to reserve not to exceed four percent of a State's allotment of construction grant funds for the purpose of making grants to the State for the costs of administering aspects of the construction grants program which the Administrator has delegated to the State.

Subsection (c) also amends section 205(g)(1) by adding a provision that the Administrator shall reserve each fiscal year beginning after September 30, 1984, $900,000 from the sums available to the State of New York under the subsection for such fiscal year, $900,000 from the sums available to the State of New Jersey under the subsection for such fiscal year, and $200,000 from the sums available to the State of Connecticut under the subsection for such fiscal year. These sums shall be used by the Administrator to make a grant for each such fiscal year to the Interstate Sanitation Commission established by these States by interstate compact to carry out the functions of such Commission under the Federal Water Pollution Control Act. The Commission is an environmental agency of the States of New Jersey, New York, and Connecticut, established by an interstate compact having the consent of Congress. Among other things, the Commission has jurisdiction of a regulatory character over water quality in the tidal waters of northeastern New Jersey, southeastern New York, southwestern Connecticut Metropolitan Area. Specifically, the Interstate Sanitation District includes the Hudson River from the Bear Mountain Bridge to the ocean, Raritan and Sandy Hook Bays, the waterways of the New York Harbor Complex, and Long Island Sound westerly of a line from New Haven to Port Jefferson. The Commission monitors receiving waters and effluents, administers water quality standards, makes regulations containing both effluent limitations and receiving water quality standards, and has authority to enforce its regulations.

In view of the Commission's role in administering provisions of the Federal Water Pollution Control Act, the Committee considers it appropriate to provide additional grant assistance to the Commission under section 205(g).

Subsection (d) of section 16 is a conforming amendment to section 205(i) of the Act so that it will be consistent with the extension of the authorization for construction grants contained in section 3 of H.R. 3282. Section 205(i) provides that a total (as determined by the Governor of a State) of not less than four percent nor more than seven and one-half percent of the construction grant funds allotted to a State shall be used only to increase the Federal share of construction grants for construction of treatment works utilizing innovative or alternative processes and techniques. The increase in the grant for such treatment works is twenty percent greater than the Federal share established in section 202(a)(1), but in no event greater than eighty-five percent.

Subsection (e) of section 16 amends section 205(j)(3) of the Federal Water Pollution Control Act which directs the Administrator to reserve each fiscal year not to exceed one percent of the sums allotted and available for obligation for each State for water quality management planning. Subsection (e) provides that the State shall allocate at least 50 percent of the amount granted to the State for a fiscal year under the section to regional interstate public comprehensive planning organizations in the State, except in any fiscal year for which the Administrator and Governor of any State determine jointly that allocation of at least 50 percent to such organizations will not substantially assist in achieving the goals of the Act.

In the Municipal Wastewater Treatment Construction Grants Amendments of 1981 (P.L. 97-117), a new subsection, 205(j), was added to provide assured funding for a variety of planning purposes. The set-aside is to be for water quality management planning including, among other things: identifying cost effective and locally acceptable point and non-point measures; developing implementation plans; identifying water quality problems; and determining which publicly owned treatment works should be built, and for implementation of section 303(e) of the Act.

A key part of the provision in the 1981 Amendments, which is now part of the Federal Water Pollution Control Act, is:

> (3) In carrying out planning with grants made under paragraph (2) of this subsection, a State shall develop jointly with local, regional, and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undesignated public comprehensive planning organizations to carry out the purposes of this subsection.

Subsection (e) reinforces the original intent to have these organizations carry out a significant part of the program under section 205(j). Such comprehensive planning organizations are assured at least 50 percent of 205(j) funds. There is an exception to this requirement where the Administrator of EPA and the Governor jointly determine otherwise to recognize the differing circumstances among the States.

Subsection (f) of section 16 adds a new subsection to section 205 of the Federal Water Pollution Control Act which provides that one-fourth of 1 percent of any amount appropriated for the Construction Grants Program for any fiscal year after fiscal year 1984 shall be reserved by the Administrator for carrying out investigations and audits authorized by the Act of projects for which funds are made available under Title II.

This provision is based on information obtained by an investigation conducted by the Committee's Subcommittee on Investigations and Oversight. In 1981, that Subcommittee investigated problems associated with the construction of treatment works and the adequacy of EPA auditing procedures.

At the time of the Subcommittee's review, the EPA Office of Inspector General's (OIG) resources were so inadequate that it was facing a 70 work-year backlog in audit requests. Further, the OIG had virtually no investigators in two of the EPA's audit regions covering 27 states which had more than $10 billion in active Construction Grants Program projects. Information recently obtained by the Subcommittee indicates that by the end of this year the EPA will still be confronted with a backlog of as many as $1 billion worth of wastewater treatment projects in need of final audits.

Subsection (f), which would result in the allocation of some $6 million annually to the Inspector General's Office at the current level of Construction Grants Program authorizations, will help insure the integrity of the program and the protection of the public's investment in these wastewater treatment facilities.

Subsection (g) of section 16, paragraph (1), directs the Administrator to make a grant, from funds allotted to the State of California under section 205 of the Act, to the City of Avalon, California, for improvements to the publicly owned treatment works of that City.

Paragraph (2) of subsection (g) directs the Administrator to make a grant of $2,337,000 from funds allotted to the State of Ohio for fiscal year 1985 to the owners of the Rocky River Wastewater Treatment Plant in Rocky River, Ohio, for reimbursement of the owners for cost of construction of the plant.

The project at Rocky River, which also serves the communities of Bay Village, Westlake, and Fairview Park, was originally funded in 1968 under the Research and Development grant provisions of the Federal Water Pollution Control Act. The project was to use an advanced system of chemical coagulation and carbon filtration in order to provide the high level of treatment required for discharges into Lake Erie. Construction of the plant was initiated in October 1972. Its operation has been a total failure, and a new plant is now being constructed.

EPA has interpreted section 206 of the Act as not being applicable to the Rocky River plant because of the date on which construction was commenced and the fact that it was built with research and development grant assistance rather than construction grant assistance under the Pollution Control Act in existence prior to the 1972 amendments.

The Committee believes that the plant should be eligible for reimbursement and has accordingly provided for it in subsection (g).

Paragraph (3) of subsection (g) directs the Administrator to make grants from funds allotted to the State of Pennsylvania for fiscal year 1985 to Walker Township, Pennsylvania, for developing a collector system and connecting its wastewater treatment system into the Huntingdon Borough Pennsylvania Sewage Plant, and to Smithfield Township, Pennsylvania, for rehabilitating and extending its collector system.

Sewage disposal in Walker Township is presently accomplished by on-site methods, such as septic tanks and cesspools, and their appurtenances. Such methods are suitable in some parts of the Township in its present state of development. However, in areas with relatively high population density and certain subsurface conditions, there is dire need of public sewers in the immediate future. The project includes construction of a complete sanitary sewage collection system for the Village of McConnellstown and other population concentration areas of the townships (approximately 47,000 linear feet of sanitary sewers), two sewage pumping stations and force mains and a separate interceptor sewer from the Walker Township line to the Huntingdon Sewage Treatment Plants. The estimated cost of the project is $4.5 million. Huntingdon Borough is currently proceeding toward providing required secondary treatment without benefit of EPA construction grants funding. The Committee commends their efforts and wants it to be clear that the funding of the Walker Township project shall not place any construction grants regulations or requirements on Huntingdon Borough as it proceeds on its own.

The Smithfield Township sewer system rehabilitation and extension is in two parts. The first portion is the rehabilitation and replacement of approximately 9,000 linear feet of sewers, laterals, and drains. The estimated cost is $500,000. The second portion is construction of a sewer system to serve the McConnellstown Road area of Smithfield Township from Kelly's Corner to the Walker Township line. The project includes construction of approximately 6,000 linear feet of sewers and laterals. The estimated cost is $400,000.

Paragraph (4) of subsection (g) directs the Administrator to make a grant to the Elk Pinch Public Service District in West Virginia in amounts not exceeding $3 million for the cost of constructing the portion of the wastewater treatment plant of that district which is not yet constructed. As a condition to receiving this grant, the Elk Pinch Public Service District must agree to take necessary steps including litigation, to recover funds from parties against whom the District has claims for damages relating to the design and construction of the plant. Any amounts recovered are to be paid back to the Administrator and are to be reinstated to the allotment of West Virginia under the Construction Grants Program.

Paragraph (5) requires the Administer to make a grant of $250,000 to the City of Taylor Mill, Kentucky, for any necessary repairs and reconstruction of the City's publicly owned treatment works. The Taylor Mill grant is to be made from funds allotted under section 205 of the Federal Water Pollution Control Act for fiscal year 1985. The Committee has determined that special emphasis should be placed on addressing this wastewater facility need because 49 percent of the population in the area affected by these repairs is below the poverty level.

## SECTION 17

Section 17 adds to Title II of the Federal Water Pollution Control Act a program for grants to States for establishment of water pollution control revolving funds.

Subsection (a) of new section 220 directs the Administrator to make a grant to each State for deposit in a Water Pollution Control Revolving Fund for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works as defined in section 212 of the Act which are publicly owned.

Subsection (b) provides that, before receiving a grant, the State must first deposit in the fund an amount equal to 20 percent of the amount allotted to the State for a fiscal year.

Each State must submit annually to the Administrator a certification that, upon completion of any project for treatment works for which financial assistance is made available under this section, discharges from such treatment works will meet all applicable requirements necessary to achieve applicable State and Federal water quality standards. The State must further certify that it will comply with all provisions of this section.

Each State is to establish a Water Pollution Control Revolving Fund to provide assistance under this section. The State shall deposit in such Revolving Fund any Federal funds allotted to that State under this section, any amounts received by the State for repayment of loans made by that State with funds in the Revolving Fund and any other funds, except for funds received under any other section of Title II, which the State wishes to deposit in its Revolving Fund. Construction grant funds cannot be deposited in the Revolving Fund.

Subsection (c) of new section 220 provides that a State may use amounts in the Revolving Fund only to make loans, loan guarantees, payments to reduce interest on loans and loan guarantees, bond interest subsidies, and bond guarantees to municipalities and intermunicipal and interstate agencies.

In addition, to the extent provided by State law, any State may issue revenue or general obligation bonds using amounts in the Revolving Fund as the source of revenue or security for the payment of interest and principal on the bonds. The proceeds of the sale of the bonds shall be deposited in the Revolving Fund. No municipality or intermunicipal or interstate agency shall receive a loan from the Revolving Fund unless such municipality or agency establishes a dedicated source of revenue for the repayment of the loan.

A State may provide assistance under this section to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Administrator under any other section of Title II.

A State may provide financial assistance from the Fund for any project which is on the State's priority list under section 216 of the Act, without regard to the ranking of the project on the list.

Subsection (d) of new section 220 provides that a State may make assistance available under this section from the Revolving Fund established by the State to finance the costs of facility planning and the preparation of plans, specifications and estimates for construction of publicly owned treatment works. If the grant recipient under this subsection ultimately receives a construction grant from the Environmental Protection Agency which includes reimbursement for non-Federal funds expended for planning and engineering, the recipient must promptly repay the loan to the extent of the allowance it receives from the Environmental Protection Agency.

Subsection (e) requires each State to annually make a full and complete report to the Administrator concerning the use of Federal funds made available under this section in such manner as the Administrator shall prescribe. Also, at least annually, the Administrator shall conduct, or require each State to have independently conducted, reviews and audits as may be deemed necessary and appropriate by the Administrator to carry out the objectives of this section. Audits of the use of Federal funds shall be conducted in accordance with the auditing procedures of the General Accounting Office.

Subsection (f) states that the provisions of Title II of the Federal Water Pollution Control Act shall not apply to financial assistance under new section 220 except to the extent specifically provided in new section 220. The purpose of this provision is to give States maximum flexibility in the use of the revolving fund.

Subsection (g) of new section 220 authorizes to be appropriated to carry out this section not to exceed $1,600,000,000 per fiscal year for each of the fiscal years 1985 through 1988. These funds are to be allotted by the Administrator in accordance with the same table which provides for allotment of Construction Grant funds. Sums allotted to a State for a fiscal year shall remain available for a grant to such State for the fiscal year for which authorized and for the following fiscal year as well. Any funds granted to a State for a fiscal year under this section which are not utilized by such State for any of the purposes of this section during such fiscal year and the following fiscal year shall be repaid to the Administrator for reallotment among the other States.

The revolving fund was intentionally developed to provide maximum flexibility to the States. The Committee believes this program should be maintained primarily as a State-controlled effort. The Committee will, however, exercise its oversight responsibilities to assure that the States manage the program to optimize the benefits to localities in their efforts to meet the requirements of the Federal Water Pollution Control Act.

Many communities on State priority lists for construction grants funding are too low on the lists to receive grants. Others may not receive the grants as quickly as they are prepared to go forward. The revolving fund is intended to provide a complementary system to the Construction Grants Program. The fund can be used for a project anywhere on the priority list and can be used in combination with grant funds. The $1.6 billion authorization over four years will provide a series of permanent funds among the States totalling $6.4 billion nationwide.

The suggestion of a loan or similar fund as an adjunct to or in lieu of the construction grants program has been discussed for several years. The Committee received substantial testimony that was very helpful in designing this new proposal.

### SECTION 18

Section 301(k) of the Act provides that, in the case of any facility which proposes to comply with the requirements of best available technology by replacing existing production capacity with an innovative production process, which will result in an effluent reduction significantly greater than that required by the otherwise applicable effluent limitation or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable limitation, the Administrator may establish a compliance date no later than July 1, 1987—three years later than the final compliance date otherwise provided in the Act. Section 18 amends this provision, changing the compliance date from July 1, 1987, to a date two years after the date for compliance with the effluent limitation which is otherwise applicable.

In the period since the 1977 Amendments, there have been delays in final promulgation of effluent guidelines. This is in large part what has led to extension of the compliance deadlines in Section 4 of H.R. 3282. There is still potential for the kinds of innovative processes envisioned in the 1977 Amendments. For this reason, the 301(k) innovative technology extension is continued and is to be no later than two years after the date for compliance with effluent limitations otherwise applicable.

### SECTION 19

This section adds a new subsection (n) to section 301 of the Federal Water Pollution Control Act concerning remining operations. It provides that, in the case of any coal remining operation, effluent limitations under the Act shall apply only to that portion of the discharge from the remining operation which exceeds the discharge from the site of the operation occurring immediately before the beginning of the remining operation. The term "coal remining operation" is defined to mean any coal mining operation which begins after the date of enactment of H.R. 3282 at a site at which coal mining was conducted before the date of enactment which was not, at the time the earlier mining was conducted, subject to the requirements of Title V of the Surface Mining Control and Reclamation Act of 1977.

At the time of the passage of the Surface Mining Control and Reclamation Act (SMCRA), an estimated 1.5 million acres of land had be disturbed by coal mining, and over 11,500 miles of streams polluted by sediment or acidity from surface or undergound mines. The abandoned mined lands program authorized by SMCRA established a fund to reclaim these abandoned sites where there is no continuing reclamation responsibility under State or Federal law. The program is funded by a reclamation fee levied on coal operators of 35 cents per ton on surface mined coal and 15 cents per ton on underground mined coal. Fee collection began in 1978 and will extend through 1992.

It is estimated that reclamation of 100 percent of coal related abandoned mine land problems would require expenditures of about $12 billion in constant 1983 dollars. However, published estimates of the cost to rehabilitate lands affected by past coal mining activities have exceeded $30 billion. The current program will result in the collection of approximately $3 billion and will resolve approximately 10 percent of the national problem through the use of State and Tribal share funds (50 percent of total collections). Expenditure of all money generated from both share (State/Tribal and Federal) would result in something less than 20 percent of the problem being resolved.

Estimates indicate that approximately 40-45 percent of these lands contain additional recoverable reserves that today can be mined with economic benefits. The intent of section 19 is to provide a limited incentive to remine abandoned coal mining sites through a very limited exclusion of discharge of pollutants occurring at the abandoned sites from effluent limitations established pursuant to the Federal Water Pollution Control Act. In the absence of remining, these discharges would continue in view of the limited resources available for reclamation of abandoned mines. Remining, however, would be subject to the requirements of the Surface Mining Control and Reclamation Act, which would result in reclamation of the site.

There are a number of provisions in the Surface Mining Act and regulations designed to protect the quality of water in areas where surface coal mining operations are being conducted. The Act reflects the understanding that there is likely to be some temporary disruption to water quality and quantity during the actual mining process. The operator, whether proposing a new or remining operation, is required to submit in his permit application a determination of the probable hydrologic consequences of the operation on surface and groundwater quantity and quality. This will be based on baseline hydrologic, geologic and other information collected as part of the permit application. The baseline hydrologic data will be collected for a minimum of six months prior to mining but sufficient to show seasonal variations in quantity and quality. It will address acid forming and potentially toxic materials which could contaminate surface or groundwater. The regulatory authority must then perform a cumulative hydrologic impact assessment based upon previous and predicted mining operations. In addition, there are numerous other performance standards to ensure proper reclamation and protection of public health and safety.

Because reclamation techniques require some form of regrading, surface hydrology in most cases would improve from controlling the quantity and direction of flow. Quality of surface flow is enhanced through reclamation because many potential point-source discharges of poor quality water would be eliminated through filling, grading, and revegetation. These beneficial impacts to surface hydrology typically range from minor to significant, depending on site conditions, and are of long duration.

The exclusion from the applicability of effluent limitations applies only to the discharges occurring at an abandoned mine prior to the commencement of remining. The type, amount and nature of these discharges are expected to be determined in collection of baseline data connected with the permit application process under the Surface Mining Control and Reclamation Act. For any remining operations not covered by that Act, a similar process of gathering baseline data is to be followed.

Any additional, or different, discharges from the remining operation are subject to effluent limitations under the Federal Water Pollution Control Act. If, for example, the remining results in a reduction of the pre-existing discharges, this reduction is not subtracted from the discharges associated with remining in determining how much of the discharges are excluded from the effluent limitations. These limitations apply not only to additional discharges associated with the remining operatoin, but also to any discharges which are different, in terms of location, source, amount, concentration, and the like, from those occurring at the abandoned site, including any increase in concentration of pollutants in pre-existing discharges resulting from remining. Also, any discharges associated with pumping out water from mines preparatory to or as part of remining would be subject to the effluent limitations.

### SECTION 20

Section 304(a)(1) of the Act directs the Administrator to develop and publish criteria for water quality accurately reflecting the latest scientific knowledge on the kind and extent of all identifiable effects on health and welfare. Section 20 amends this provision by adding the requirement that, in developing, publishing and revising criteria, the Administrator shall consider, among other things, the effects on the ecosystem of water hardness, pH, chemical and physical interactions, persistence of pollutants and the long-term effects of pollutants, sedimentation from chemical reaction of pollutants, the absorptive properties of sediments, resuspension, and bio-uptake.

Subsection (b) of section 20 adds the requirement that in the development of new or revised criteria with respect to a pollutant, whenever the Administrator determines that a well-founded and significant difference of opinion exists as to the latest scientific and research knowledge on the matters referred to in the section, the Administrator shall publish a description of this difference of opinion along with the publication of the criteria.

Subsection (b) also provides that new or revised criteria should be established so as to provide an ample margin of safety to protect human health and fish and wildlife resources.

### SECTION 21

Subsection (a) of this section adds a new paragraph (5), including two subparagraphs, to section 307(b) of the Federal Water Pollution Control Act. Section 307(b) requires the Administrator to promulgate national categorical pretreatment standards for the control of pollutants introduced by industrial dischargers into publicly owned treatment works.

New subparagraph (5)(A) authorizes the Administrator to establish a single compliance date for any source—also referred to as any indirect discharger—which is subject to two or more pretreatment standards that have been promulgated before the date of enactment of H.R. 3282. The single compliance date shall apply to all of the pretreatment standards applicable to the source and promulgated before the date of enactment, shall apply only to these already-promulgated and applicable standards, shall only be granted to sources which make application for the single compliance data, and shall not be later than one year after the earliest applicable pretreatment standard compliance date or not later than the date for compliance specified in the last promulgated pretreatment standard applicable to the source, whichever comes first. The Administrator shall not establish a single compliance date unless the applicant demonstrates to the satisfaction of the Administrator that the establishment of a single compliance date will result in compliance by the applicant with all such applicable standards earlier than would be the case without the single date.

New subparagraph (5)(B) directs the Administrator to consider at least three factors in determining whether a single compliance date should be established and, if so, what the specific date should be. These factors are the extent to which the technology which is the basis for one of the applicable pretreatment standards is inconsistent with the technology which is the basis for another of the applicable pretreatment standards; the extent to which the later pretreatment standards require technology in addition to that required by the earlier standards, regardless of whether the later technology is or is not inconsistent with that required by the earlier standards; and the extent to which achieving compliance with the later standards at an earlier date is practicable based on engineering, design and construction considerations.

The Federal Water Pollution Control Act requires the Administrator to establish mandatory national pretreatment standards to prevent the discharge of any pollutant into publicly owned treatment works which interferes with, passes through, or is otherwise incompatible with the works. The Act specifies a time for compliance not to exceed three years from the date of promulgation of a standard and focuses on the control of toxic pollutants for the 65 classes of industrial and commercial discharges in specific industrial categories determined to be the most significant sources of 126 priority toxic pollutants.

The Administrator has implemented these requirements through the promulgation of General Pretreatment Regulations, which establish standards common to all industries, and industry-specific Categorical Pretreatment Standards for the 25 specific industrial categories determined to be the most significant sources of toxic pollutants. This approach requires an industrial discharger which combines wastestreams and is subject to multiple categorical pretreatment standards to comply sequentially with each categorical standard as it is promulgated. Such industrial dischargers are commonly referred to as integrated facilities.

Under the scheme of the Act and the Agency's implementing regulations, integrated facilities must meet more than one deadline for compliance, since more than one pretreatment standard applies to these facilities and since the Administrator has promulgated the categorical pretreatment standards with different compliance dates for each standard. The multiple deadlines which these facilities are subject to can result in the initial construction by the integrated indirect discharger of a treatment plant which later is either inadequate, necessitating upgrading, or overdesigned, resulting in excess treatment capacity and wasted resources. In either event, a substantial amount of monies for pretreatment facilities could be misspent due to the "moving target" compliance dates.

This inherent problem faced by integrated facilities has been exacerbated by the complexity of the regulations promulgated by the Administrator to implement the Act's pretreatment requirements; the controversy and legal challenges, brought by industry and environmental organizations alike, related to the Agency's pretreatment regulations; and the fact that the effective date for a portion of the General Pretreatment Regulations necessary for integrated facilities to apply and comply with the categorical standards was indefinitely deferred administratively and then retroactively reinstated by the Third Circuit Court more than fifteen months later, substantially shortening the compliance time available to many integrated facilities.

The Committee has responded to this situation under subsection (a) of section 21 by providing integrated facilities with an alternative to sequential compliance with each applicable categorical standard as it is promulgated. Subsection (a) authorizes the Administrator to establish a single compliance date for an integrated facility, at the request of the facility, for all pretreatment standards promulgated prior to enactment of this provision and applicable to the facility. Under subsection (a), at least the earliest of an integrated facility's categorical pretreatment standard compliance dates would be deferred and the latest would be accelerated, both to a single date, resulting in total compliance for the facility at an earlier date than would be the case in the absence of a single compliance date. Where the first and last pretreatment standards have compliance deadlines one year or less apart, the single compliance date established by the Administrator must be earlier than the date of compliance with the last standard required.

While subsection (a) sets forth three factors which the Administrator must consider in determining whether a single compliance date should be established for an integrated facility, the Committee does not intend for the Administrator to limit his inquiry to the three enumerated factors. Instead, factors such as the amount of time necessary to achieve compliance by changing processes to eliminate toxic pollutants, the amount of time an applicant has had to comply since issuance of pretreatment standards, and the extent to which an applicant has made good faith efforts to come into compliance as quickly as possible may also be relevant and should be considered, as appropriate, by the Administrator in making his determinations under this provision.

Subsection (b) of section 21 extends the date of compliance with the electroplating pretreatment standards to December 31, 1984. In addition, the Administrator is authorized to further extend the date of compliance with these standards for any indirect discharger who submits a report to the Administrator not later than December 31, 1984, which report complies with Section 403.12 of Title 40 of the *Code of Federal Regulations* in all respects except the compliance schedule, and which contains a compliance schedule adequate to achieve compliance with the electroplating pretreatment standards not later than July 31, 1985.

Current law, by regulation, requires non-integrated facilities covered by the electroplating categorical pretreatment standards to comply with those standards by April 27, 1984; integrated facilities must be in compliance by June 30, 1984. Subsection (b) extends the compliance date for both types of facilities to December 31, 1984, with the possibility of an additional extension for individual facilities which make the showing required by the subsection.

The Committee recognized, in drafting this subsection, that a significant number of the indirect dischargers subject to the electroplating point source category will be unable to comply with the pretreatment standards requirements by the April and June dates. While exact figures are unavailable, it has been established that as many as 80 percent of the more than ten thousand affected dischargers will not be in compliance after June 30, 1984. It is also recognized that many of these dischargers can achieve compliance before, or not later than, December 31, 1984, or will not require the full amount of the possible additional extension to July 31, 1985. The Committee anticipates that expeditious and orderly progress towards obtaining compliance with the electroplating pretreatment standards by the regulated sector and towards implementing the pretreatment program by the Agency will be made.

The Committee notes that subsections (a) and (b) must be read together. The compliance date for electroplating pretreatment standards in the case of an integrated facility is December 31, 1984, or whatever later date is established by the Administrator pursuant to an application made by the facility under subsection (b).

The Administrator, in determining whether to grant an extension beyond December 31, 1984, for compliance with the electroplating standards, is expected to take into account the reasonable time required for compliance by a facility, and the presence or lack of good faith efforts on the part of the facility to comply with the standards. The Committee emphasizes that dischargers subject to the electroplating standards are not eligible to receive a compliance date extension beyond December 31, 1984 unless the complete report required by subsection (b) is submitted to the Administrator prior to December 31, 1984. Any such direct discharger who contemplates the possibility of applying for a compliance date extension beyond December 31, 1984 should begin immediately if it has not already done so to develop the information required by the subsection.

Subsection (c) of section 21 directs the Administrator to increase the number of employees in the Agency in order to effectively implement the Federal Water Pollution Control Act's pretreatment requirements.

The Committee believes that insufficient Agency resources are being dedicated to regulatory and implementation activities relating to the National Pretreatment Program. This program has been surrounded by controversy since 1972 and it is only now on the verge of being implemented nationwide. Of the approximately 1675 publicly-owned treatment works required to develop pretreatment programs under the Federal regulations, only 371 had approved programs as of the beginning of fiscal year 1984. During fiscal year 1983, only 306 programs were approved. If the Agency's goal of having all 1675 programs approved and functioning by the end of fiscal year 1985 is to be achieved—a goal the Committee shares and would even like to see exceeded—far more resources than are currently being budgeted for this effort will be required.

The Committee believes that EPA resources dedicated to pretreatment program approval and enforcement activities should be substantially increased compared to levels assumed in the proposed budget. The Agency has estimated that it will take fifteen days to review each POTW application for pretreatment program approval. Based on the number of approvals already made, the number projected to be made before the end of FY 85, and the level of resources currently being proposed for pretreatment program efforts, the Agency will barely be able to meet its stated goal of having all 1675 programs approved by September 30, 1985. However, to achieve this level of program approvals, the Agency will have to dedicate all of its currently budgeted resources to the effort, having virtually none available for reviewing State program delegation applications (40 days required per application), reviewing baseline monitoring reports for compliance with EPA regulations (4–8 days per report), processing removal credit applications (20 days per application), providing necessary support functions for enforcement actions (10–20 days per enforcement action against an industrial user and the same for each action against a POTW), monitoring a POTW's implementation of its program (15 days per POTW), and monitoring a State's implementation of its pretreatment program (10 days), to list just a number of pretreatment program functions that must also be performed. The Committee is convinced for these and other reasons that substantial additional revenues will be required for the pretreatment program in FY 85 and beyond.

Subsection (d) of section 21 amends section 307 of the Federal Water Pollution Control Act to authorize the owner or operator of a publicly owned treatment works to grant up to a two-year extension for compliance with a categorical pretreatment standard to an indirect discharger that intends to comply with such applicable standard by using an innovative treatment system that meets the criteria specified in section 301(k) of the Act, if (1) the Administrator determines that the innovative system has the potential for industry-wide application and the action will not cause the publicly owned treatment works to violate its NPDES permit, and (2) the Administrator or a State having an approved pretreatment program concurs with the proposed action of the owner or operator of the publicly owned treatment works.

Section 301(k) of the Federal Water Pollution Control Act currently authorizes an extension of the date for compliance with certain best available technology treatment requirements for direct dischargers where the applicable innovative technology or process installed by the direct discharger has potential for industry-wide application and achieves either significantly greater pollutant reduction compared to that required by the applicable effluent limitations or achieves the required reduction at significantly lower cost. Subsection (d) is intended to provide the same kind of innovative technology deadline extension for indirect dischargers as is provided in section 301(k) of the Federal Water Pollution Control Act, as amended by section 18 of H.R. 3282, for direct dischargers. In this way, the Committee intends to provide an additional incentive to the development of new and better techniques to control the discharge of pollutants.

The purpose of this amendment is to encourage the development of innovative processes and control technologies. It is not in any way intended to provide a means for delay in compliance with the deadlines established in the Act. The Committee thus understands "innovative system" to be one which has not yet been demonstrated on a commercial scale under operating conditions in any industry; is proposed for application in a very few plants; and is unlikely to be installed without this encouragement. Additionally, this provision is not intended to allow delays by other companies awaiting the results of the demonstration.

### SECTION 22

This section amends section 309 of the Federal Water Pollution Control Act to provide that dischargers or individuals who knowingly violate or cause the violation of certain of the Act's requirements will be subject to criminal penalties of up to $50,000 per day and/or imprisonment for up to two years.

Under section 22, punishment by fine of between $2,500 and $25,000 per day, or imprisonment for up to a year, or both, is required with respect to (1) any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act, or any permit condition or limitation implementing any of these sections in an NPDES permit, or any requirement imposed in an approved pretreatment program, or any requirement in a dredge and fill permit under seciton 404 of the Act; or (2) any person who negligently introduces into a sewer system or a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes the treatment works to be in violation of its NPDES permit requirements. Second and subsequent violations shall be punished by a fine of not more than $50,000 per day, or by imprisonment of up to two years, or both.

Section 22 also requires punishment by fine of between $5,000 and $50,000 per day, or imprisonment for up to two years, or both, for (1) any person who knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation implementing any of these sections in an NPDES permit, or any requirement imposed in an approved pretreatment program, or any requirement in a dredge and fill permit under section 404 of the Act; or (2) any person who knowingly introduces into a sewer system or a public owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which cause the treatment works to be in violation of its NPDES permit requirements. As with negligent violations, for subsequent knowing violations, the maximum punishment which may be imposed for these knowing violations is twice that pertaining to the inital violation.

The section provides, for both of these negligent or knowing violations and affirmative defense that the introduction of any pollutant or hazardous substance into the sewer system or treatment works was in compliance with all applicable Federal, State, and local requirements governing the introduction.

Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccaurate any monitoring device or method required to be maintained under the Act shall upon conviction be punished by a fine of up to $10,000 per day or imprisonment for up to two years, or both. Second and subsequent convictions shall be punished by a fine of up to $20,000 per day of violation, or by imprisonment of up to four years, or both.

For the purpose of section 22, the term "person" means any responsible corporate officer in addition to the definition of the term in section 502(5) of the Federal Water Pollution Control Act. The term "hazardous substance" means any substance designated pursuant to section 311 of the Federal Water Pollution Control Act; any element, compound, mixture, solution, or substance designated under section 102 of the Comprehesive Environmental Response, Compensation, and Liability Act of 1980; certain hazardous wastes having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act; any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act; and any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

Presently the Federal Water Pollution Control Act has no provision that deals with knowing violations of major statutory of regulatory requirements. Section 22 is intended to be used primarily to address intentional violations of the Act occurring on a regular basis over an extended period of time that result in significant harm to public health or the environment. The section is intended to provide for imposition of serve penalties for such actions.

## SECTION 23

This section authorizes the assessment of civil penalties for violations of the Act. Whenever on the basis of any information available to him the Administrator finds that any person is in violation of sections 301, 302, 306, 307, 318, or 405 of the Act or is in violation of any permit condition or limitation implementing any of these sections in a permit issued under section 402 of the Act, he may, after consultation with the State in which the violation occurs, assess a civil penalty of not more than $10,000 per day of violation, except that the penalty shall not exceed a total of $75,000. The Secretary of the Army is given similar authority in connection with permits issued by him under section 404 of the Act, which relates to the discharge of dredged or fill material.

A civil penalty is assessed under this provision by the Administrator or the Secretary, as the case may be, by an order made on the record after opportunity for a hearing. Before issuing such an order, the Administrator or the Secretary is required to give written notice to the person to be assessed the civil penalty of the proposal to issue such an order and is required to provide the person with an opportunity to request, within 15 days, a hearing on the order.

In determining the amount of the civil penalty the Administrator or the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, the ability to pay, the effect on the ability to continue to do business, any history of prior violations, the degree of culpability, economic savings resulting from the violation and such other matters as justice may require.

The Administrator or the Secretary may compromise, modify, or remit, with or without conditons, any civil penalty which may be imposed under this provision.

Any person who requested a hearing with regard to the assessment of his civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of the order with the United States Court of Appeals for the District of Columbia Circuit or for any other Circuit in which such person resides or transacts business. Such a petiton may only be filed within the 30-day period beginning on the date the order making the assessment was issued.

If any person fails to pay an assessment of his civil penalty, after the order making the assessment has become a final order, and where the person does not file a petition for judicial review of the order, or after the court has entered a final judgment in favor of the Secretary or the Administrator, the Attorney General shall recover the amount assessed in an action brought in any appropriate District Court of the United States.

The Administrator and the Secretary are given the authority to issue subpoenas in connection with hearings under this provision and may request the Attorney General to bring an action to enforce any subpoena.

Any violation with respect to which any civil penalty is imposed under this provision is not subject to a civil penalty under section 309(d) or section 311(b) of the Federal Water Pollution Control Act.

When a State has proceeded with an enforcement action relating to a violation with respect to which the Administrator or the Secretary is authorized to assess a civil penalty under this provison, the Administrator and the Secretary are not authorized to take any action under this subsection if the State demonstrates that the State-imposed penalty is appropriate.

### SECTION 24

This section contains a number of amendments to section 314 of the Federal Water Pollution Control Act, which establishes a grant assistance program to improve the water quality of lakes.

Subsection (a) of section 24 deletes the reference to "fresh water" in section 314(a)(1) in order to make the Clean Lakes Program applicable to saline, as well as fresh water, lakes. The Committee believes that lakes which are saline, both inland and those connected to bays, estuaries or other saline waters where salinity from those sources enters the lake, should not be excluded from the water quality improvement program for lakes under section 314.

Subsection (b) of section 29 consists of technical amendments to existing law to reflect the amendments made by section 24.

Subsection (c) adds a number of new subsections to section 314. New subsection (d) provides that the Administrator shall make grants to States for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The amount granted to the State for such a project shall not exceed 70 percent of the cost of the project. There is authorized to be appropriated not to exceed $100 million per year for the Fiscal Years 1985 through 1989 for these purposes.

New subsection (e) provides that any State may prepare and submit to the Administrator for approval a survey of water quality deterioration in lakes and other waters in the State which has resulted from high acidity and methods and procedures which may be applied to lakes and other waters in the State to restore water quality insofar as such quality has deteriorated because of high acidity. The Administrator shall make grants to States to carry out these methods and procedures, as approved by the Administrator. The amount granted to any State for any fiscal year shall not exceed 80 percent of the funds expended by the State in that year for carrying out approved methods and procedures. Such methods may include, but are not limited to, innovative methods of neutralizing and restoring buffering capacity of lakes and other waters that have become so acidic as to endanger game fish species, and methods of removing from lakes and other bodies of water toxic metals and other toxic substances mobilized by high acidity. The Administrator shall provide for an equitable distribution of sums among States with approved methods and procedures, with the distribution to be based on the relative need of each State for the restoration of water quality which has deteriorated as a result of high acidity. The amount of any grant to a State under this subsection is to be in addition to, and not in lieu of, any other Federally-financed assistance. To carry out new subsection (e) there is authorized to be appropriated $25 million per fiscal year for each of the fiscal years 1985 through 1989.

New subsection (f) directs the Administrator to submit annually to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works a report on the status and trend of water quality in lakes in the United States, including, but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

New subsection (g) directs the Administrator to study, in cooperation with the State of Texas, water quality problems in Lake Houston, Texas, and undertake such control measures as determined necessary to improve water quality. The study will include, but not be limited to, evaluating the feasibility of regional or consolidated waste treatment facilities and developing recommendations for cost-effective control of pollutants entering the Lake Houston watershed. A report is submitted to the Committee on Public Works and Transportation of the House and the Committee on Environment and Public Works of the Senate.

Lake Houston is a 12,000 acre lake located in the northeast section of Houston, Texas. The lake provides about 40 percent of the drinking water for the City of Houston. It is also used by thousands of residents of the Houston area for a wide range of recreational activities. At present, there is great concern that high fecal coliform counts indicates a potential serious health hazard. Given the key role played by Lake Houston in the area, the Committee believes priority action is warranted.

There has been extensive development in the vicinity of Lake Houston and a large number of very small treatment plants have been put in place in the watershed. Most of these treat less than 1 million gallons per day. Overloading, poor performance, or lack of proper operation and maintenance of these small plants may be significant factors in the water quality problems being experienced at Lake Houston. The Committee is directing that these and other factors be studied and measures taken to eliminate water quality problems. One approach for consideration is consolidating the smaller treatment plants into larger, more effective sewage treatment systems.

New subsection (h) directs the Administrator, in cooperation with the Secretary of the Army, and in consultation with State and local agencies, to conduct a one-year study of Beaver Lake, Arkansas, and then undertake a demonstration project at Beaver Lake to determine the effectiveness of measures identified in the study. The study is to find means to optimize achievement of the purposes for which Beaver Dam was constructed while preserving and enhancing the quality of the reservoir's water. Following the demonstration project, the Administrator shall submit a report on the study and the project, along with recommendations for further measures to improve the water quality of Beaver lake. This report will be submitted to the Committee on Public Works and Transportation of the House and the Committee on Environment and Public Works of the Senate. To carry out this subsection, funds appropriated under subsections (c), (d) and (e) of section 314 of the Federal Water Pollution Control Act are available.

Beaver Lake is on the White River in northwestern Arkansas, in the Ozark highlands. Beaver Dam, behind which the lake is impounded, was completed by the U.S. Army Corps of Engineers in 1965 and impounds nearly 2 million acre-feet of storage. It is operated in conjunction with other lakes in the White River basin to prevent flood damages down river. It also serves as an important source of hydroelectric power and water supply. In addition, there are eleven parks around the lake, providing substantial recreational opportunity. A high level of water quality is needed to maintain the varied uses of Beaver Lake. The comprehensive, one-year study followed by a through demonstration project, will provide the opportunity for improvements in the water quality of the lake.

New subsection (i) directs the Administrator to undertake a demonstration project for the removal of silt, stumps and other obstructions from Greenwood Lake and Belcher Creek, New Jersey. Upon completion of the demonstration project, the Administrator is to submit a report, along with recommendations for further measures to improve the water quality of Greenwood Lake and Belcher Creek, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works. There is authorized to be appropriated $10 million to carry out this subsection.

New subsection (j) directs the Administrator to undertake a demonstration project for the removal of silt and stumps from, and the control of pollution from nonpoint sources in, Deal Lake, Monmouth County, New Jersey. Upon completion of the demonstration project, the Administrator is to submit a report on the project, along with recommendations for further measures to improve the water quality of Deal Lake, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works. There is authorized to be appropriated $8 million to carry out this subsection.

New subsection (k) directs the Administrator to undertake a demonstration project for the restoration of Alcyon Lake in New Jersey including removal and disposal of contaminated sediments in the Lake. Upon completion of the project, a report is to be submitted to the House Committee on Public Works and Transportation and the Senate Environment and Public Works Committee, together with recommendations for further cleanup measures.

### SECTION 25

Section 402(b)(1)(B) of the Federal Water Pollution Control Act currently provides that permits for the discharge of pollutants are to be for fixed terms not exceeding five years.

Subsection (a) of section 25 amends this provision to provide that permits are for fixed terms not to exceed ten years, except in the case of a permit which modifies any requirement of the Act's sections 301(c), (g), (h), or (m) of the Federal Water Pollution Control Act—relating to extensions of compliance dates for direct dischargers where innovative technology is involved, modifications of compliance dates for pollutants other than toxic pollutants, modifications of technology requirements where an ocean outfall is involved and effluent limitations for certain pulp mills—and except in any case in which the State determines that the applicant has not consistently complied with any permit held by the applicant. In such excepted cases, permits shall be issued for fixed terms not exceeding five years. In carrying out this provision, the Administrator should consider, among other things, the frequency and significance of any instances of noncompliance by the permittee.

Subsection (a)(2) requires that permits must be modified promptly to insure compliance with any new or revised toxic pollutant effluent limitation under section 307(a) of the Federal Water Pollution Control Act, where such limitation is stricter than the corresponding limitation in the permit or where the new or revised limitation controls a pollutant not controlled in the permit.

The burden placed upon the Agency and the States by virtue of the numerous permits that must be issued or renewed each year has, among other things, led to extended delays in the permitting process. In order to help relieve these burdens and to expedite the process for the Agency, States, and permittees alike, section 25(a) authorizes the issuance of certain permits for terms of up to ten years.

The Agency and the States are issuing most permits for a second time. Since initial permit issuance, a great deal of familiarity and experience has been gained both with the permitting process and with specific permits and permittees. In many cases, this justifies an extended permit term. However, the Committee recognizes that for some permits the ten year term may be inappropriate. Specifically, for those permits issued pursuant to the waiver or modification provisions of section 301(c), (g), (h), or (m), a five year maximum permit term is established.

In addition, nothing is this provision infringes on the Agency's ability to establish shorter terms where the Agency deems it appropriate. Given the wide variety of permits and recognizing that the Agency is just beginning to issue many major permits with toxic limitations for the first time, it is understood that EPA will need the flexibility to set maximum permit terms of less than ten years for some dischargers.

Subsection (b) of section 25 of the bill provides that the Administrator shall not require a permit under section 402 or directly or indirectly require any State to require such a permit for discharges of stormwater run-off which (1) are from mining operations or oil or gas exploration, production, processing, or treatment operations, (2) are composed entirely of flows from conveyances or systems of conveyances used for collecting and conveying precipitation run-off; and (3) are not contaminated with process wastes, overburden, raw materials, toxic pollutants above background levels, spilled product, oil, grease, or hazardous substances in excess of reportable quantities as determined by the Administrator.

The subsection was developed by the Committee in recognition of the fact that there are numerous situations in the mining and oil and gas industries where stormwater is channeled around plants and operations through a series of ditches and similar devices in order to prevent pollution contamination of the stormwater. Many of these stormwater run-off devices are voluntary means of pollution control. For example, many mining operations located in mountainous and snow-packed areas collect run-off around the mine sites to keep such water from coming into contact with and being contaminated by process water or materials. The Committee believes that, to avoid penalizing operators for using good management practices designed to prevent or minimize pollution and for making expenditures to prevent stormwater run-off contamination, uncontaminated stormwater diversion devices should not be regulated under the permit scheme of the Act.

Subsection (c) amends section 402 of the Federal Water Pollution Control Act by adding new subsections (m) and (n). New subsection (m) provides that, in issuing a permit to a publicly owned treatment works, the Administrator shall not require additional pretreatment by any indirect discharge of conventional pollutants introduced into the treatment works as a substitute for inadequate pollution removal by the treatment works due to design or operation problems for which the treatment works is responsible. Indirect discharges into the works must still comply with all applicable pretreatment standards promulgated under the Federal Water Pollution Control Act. Nothing in this subsection affects the Administrator's authority under sections 307 and 309 of the Act, affects

State and local authority under section 307(b)(1) (pretreatment programs) or section 510 (state authority to establish limitations on discharges of pollutants), relieves the treatment works from its obligations to meet requirements of the Act, or otherwise precludes the treatment works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit.

When a publicly owned treatment works is failing to meet its permit limits due in whole or in part to a failure by the treatment works in its responsibilities, the Administrator shall not require pretreatment of conventional pollutants by indirect discharges to remedy that problem. This provision simply recognizes that in such circumstances the burden of correcting the problem lies with the publicly owned treatment works itself through adjustment of its facilities or operation. The language of this provision makes clear, however, that discharges of conventional wastes must be in compliance with all applicable pretreatment limitations and prohibitions. In addition, this subsection is not designed to interfere with EPA's enforcement authorities, State and local pretreatment authorities, or a municipality's responsibilities and options to treat or require pretreatment in order to comply with its permit requirements.

New subsection (n) allows partial delegation to the States of the Act's NPDES program. Under this provision, the Governor of a State may submit and the Administrator may approve a partial permit program for point source discharges into the navigable waters of the State where the State's partial permit program covers, at a minimum, either administration of a major category of the discharges into the State's navigable waters or a major component of the State's NPDES permit program. With respect to a partial permit program covering administration of a major category of discharges, the Administrator is authorized to approve such a program if the program covers in a complete fashion all of the discharges under the jurisdiction of a department or agency of the State and if the Administrator determines that the partial program represents a significant and identifiable part of the State's NPDES program. With respect to a partial and phased permit program covering a major component of the State's NPDES program, the Administrator is authorized to approve such a program if the Administrator determines that the partial program represents a significant and identifiable part of the State's NPDES program and if the State submits and the Administrator approves a plan for the State to assume administration by phases of the remainder of the State's NPDES program within five years.

The Committee believes that authorizing partial and phased approval of State permit programs will greatly benefit efforts to increase individual States' NPDES program implementation activities. With phased approval, States will be able to gradually assume responsibility for portions of the NPDES program over a specified period of time leading to full administration of the program by the end of the specified period. This will be particularly helpful to States having resource or other constraints which currently preclude full administration but allow something less than that at this time. Other States will benefit from the provision's authorization for a State to assume permitting authority over one or more discharge categories representing a major part of the State's permit program. For example, States with jurisdiction over point source regulation split among two or more State agencies, could apply for and receive authority to implement the permit program for all categories of discharges under the jurisdiction of one or more of its agencies.

It is the Committee's understanding and intent that, under the language of new subsection 402(n), at least the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas could qualify for partial NPDES program delegation.

Subsection (d) of section 25 of H.R. 3282 amends section 402(c) of the Federal Water Pollution Control Act to provide that a State may return or the Administrator may withdraw approval of delegated NPDES program responsibilities. In the case of an approved partial permit program covering administration of a major category of a State's point source discharges, the entire permit program related to that category and being administered by one of the State's department or agencies must be returned or withdrawn. Partial programs relating to other categories and being administered by other of the State's departments or agencies, if such is the case, may remain delegated. In the case of an approved partial and phased program covering administration of a major component of a State's NPDES program, any approved phased component must be returned or withdrawn.

Subsection (e) provides that, notwithstanding any other provision of law, the Administrator shall administer National Pollutant Discharge Elimination System (NPDES) permits for two pulp mills in Alaska according to the terms in the stipulated permits. The Administrator is to do this for a period not exceeding ten years from the date of enactment of H.R. 3282. In no event shall the Administrator require discharge standards to be less than those in effect on May 10, 1984. The two permits are NPDES permit No. AK000053-1 and NPDES permit No. AK000092-2.

Subsection (e) allows the existing permit situation to continue within the limits stated. This allows two Alaska pulp mills to discharge a higher level of Biochemical Oxygen Demand (BOD) than other mills in the United States. The Committee understands that the permits allow emissions of 75 pounds of BOD per ton of pulp produced, while the National Guideline limit is 46.8 pounds per ton of pulp produced.

### SECTION 26

This section amends section 502(14) of the Federal Water Pollution Control Act to provide that the term "point source" of pollution does not include agricultural stormwater discharges.

### SECTION 27

This section authorizes the Administrator to make a grant to the City of New York to install such additional facilities in, and make such modifications to, the Newtown Creek Sewage treatment plant as are necessary for the plant to provide secondary treatment. The Federal share of the project is 75 percent of the cost of installing such facilities and making such modifications. There is authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years beginning after September 30, 1984, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

### SECTION 28

Subsection (a) of this section directs the Administrator, upon application of the City of San Diego and for purposes of protecting the City and surrounding areas, to make grants to San Diego for a project consisting of publicly owned treatment works to provide primary or more advanced treatment of (1) not less than 60 million gallons per day of municipal sewage and industrial wastes emanating from the City of Tijuana, Mexico, and (2) such amount of municipal sewage and industrial waste for the City of San Diego as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

Subsection (b) provides that any treatment works funded under the section shall be constructed in accordance with plans developed by the City of San Diego and approved by the Administrator. Such plans shall be drawn to meet whatever construction standards would be applicable if the works were being constructed under the Federal Water Pollution Control Act's section 201 Construction Grants Program.

Subsection (c) requires the overall project authorized by section 33 to provide capacity to treat municipal sewage and industrial wastes for both of the cities of Tijuana and San Diego.

Subsection (d) provides that all of the provisions of the Federal Water Pollution Control Act which are applicable to construction grants made under subsection 201(g) of that Act shall also apply to any grant made under section 28 to provide treatment for the City of San Diego.

Under subsection (e), the Federal share of the cost to construct treatment works to treat pollutants emanating from Tijuana shall be at full Federal expense less any amounts received from the Government of Mexico. The Committee strongly intends that negotiations should proceed at the earliest possible time, and as a matter of high priority, to secure agreement with the Government of Mexico leading to an appropriate contribution from the Government of Mexico toward the project's construction, operation, and maintenance.

Subsection (f) authorizes the Administrator, upon application of the City of San Diego, to issue an NPDES permit of limited duration which modifies the requirements of section 301(b)(1)(B) of the Federal Water Pollution Control Act to permit the discharge through an ocean outfall of effluent which has received primary or more advanced treatment—but less than secondary treatment—by facilities constructed with Federal assistance under the Water Quality Renewal Act of 1984.

Subsection (g) provides that, in the event the treatment works constructed under section 33 to treat Mexican sewage and waste has capacity which is no longer necessary to provide such treatment, any such capacity may be used to provide treatment for the City of San Diego.

Subsection (h) defines the terms "construction" and "treatment works" for purposes of section 28 in the same way as those terms are defined under section 212 of the Federal Water Pollution Control Act.

Subsection (i) authorizes the appropriation of such sums as may be necessary for fiscal year 1985 and beyond to make grants under the section.

Section 28 is intended to address one of the most serious water pollution problems currently being experienced in the United States.

The City of Tijuana, located at the border of California and Baja California Norte, Mexico, presently generates approximately 20 million gallons of sewage per day. In the future, as the City's rapidly expanding population continues to grow beyond the current one million inhabitant level, and as running water is provided to more of the city's homes, the amount of sewage emanating from the city will also greatly increase.

Tijuana has neither a reliable sewage collection system nor a fully operating wastewater treatment facility. Consequently, discharges of untreated and partially treated sewage from Tijuana to the ocean at Playas de Tijuana, in addition to sewage seepages across the border, have continually contributed to the contamination of U.S. beaches and territory in the Tijuana River Valley region. This contamination has not only had an adverse economic impact on the U.S. Communities in the region, it also poses a severe health hazard to citizens on both sides of the border. In August of 1983, for example, more than 6 million gallons per day of Tijuana sewage were flowing into the ocean near Imperial Beach, California. This forced the closure of Imperial, Silver Strand, and Coronado Beaches where water samples indicated the contamination to be as high as 100 times the level considered safe. Unfortunately, this was not an isolated incident. Beaches north of the border were quarantined for 307 days in 1980, 219 days in 1982, and 309 days in 1983 because of pollution emanating from Tijuana.

Section 28 provides authorization for the construction of wastewater treatment works having such capacity as may be determined necessary by the City of San Diego with concurrence of the Administrator to provide for the long-term sewage treatment needs of both the City of Tijuana, Mexico, and the City of San Diego. Further, section 28 may permit initial or interim phases of the sewage treatment works to provide less than primary treatment, provided, however, that such phases shall be compatible with and convertible to a treatment facility with primary or more advanced treatment.

With regard to treatment works authorized for sewage and industrial waste for the City of Tijuana, Mexico, it is fully expected that the Administrator will expeditiously process any application by the City of San Diego for a permit, under section 402 of the Clean Water Act, to modify requirements for secondary treatment in order to discharge through an ocean outfall.

### SECTION 29

This section provides that, for purposes of protecting the economy, public health, environment, and surface and ground water of the community of Naco, Arizona, which are in danger and are being polluted by raw sewage emanating from the community of Naco, Sonora, Mexico, upon application of the City of Naco. Arizona, the Administrator of the Environmental Protection Agency shall make grants to such City for construction of a project consisting of a publicly owned treatment works to provide primary or more advanced treatment of not less than 150,000 gallons of untreated sewage emanating from the City of Naco, Sonora, Mexico.

Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the City of Naco, Arizona, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

The Federal share of the cost of construction of the treatment works shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

There is authorized to be appropriated to the Administrator $2,000,000 to make grants under this section for fiscal years beginning after September 30, 1984.

Since early 1977 the United States has negotiated with Mexico regarding immediate and long-term solutions to the problems of chronic sewage discharges into Greenbush Draw from the Naco, Sonora, treatment facilities. The City of Bisbee and County of Cochise have supplied equipment and manpower for repairs on many occasions, with funding from the International Boundary and Water Commission. However, because of frequent damage from heavy rains, inadequate maintenance of facilities, increased sewage load, and the strained economic conditions in Naco, Sonora, the frequency of sewage overflow from the treatment ponds and manholes in Naco, Sonora has increased in the last three years.

The groundwater production facilities for Bisbee, Arizona which are owned and operated by Arizona Water Company, are located in Greenbush Draw, approximately one mile downstream from the international boundary. The sewage discharge from Naco, Sonora threatens to contaminate the aquifer which supplies all of the City of Bisbee's drinking water. The sewage load at Naco, Sonora is currently 132,000 gallons per day; this load was flowing unchecked into Greenbush Draw in December 1983. As an emergency measure to prevent this sewage from reaching the Arizona Water Company well field, a diversion and impoundment were constructed on private property in Naco, Arizona again using funding from the International Boundary and Water Commission. This holding pond is unacceptable as a long-term measure and is not adequate to retain sewage flows in the event of heavy seasonal rains which are typical of southern Arizona nor to eliminate the threat of groundwater contamination.

## SECTION 30

Subsection (a) of this section provides that after March 15, 1986, the City of New York shall not discharge raw sewage into navigable waters in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily discharge of raw sewage by the City of New York during the 12-month period preceding March 15, 1986, as determined by the Administrator of the Environmental Protection Agency, except as provided in subsection (b) of this section.

Subsection (b) provides that, in the event of any significant interruption in the operation of a wastewater treatment plant which is operated by the City of New York, the Administrator of the Environmental Protection Agency may waive the limitations of subsection (a), but only to such extent and for such limited period of time as may be reasonably necessary for such City to resume such operation.

Significant interruptions include situations which are beyond the control of the City of New York, such as accidents or acts of God causing damage to the plants or to construction equipment.

The Administrator of the Environmental Protection Agency is directed to undertake measures, including modifications of schedules of compliance, to reduce and eliminate at the earliest practicable date, the discharge of raw sewage by the City of New York taking into account any increase in the authorization for grants for construction of treatment works made by H.R. 3282 and standards and practices which are necessary for the attainment of that water quality which assures protection of public water supplies, protection of the public health, and the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, and allows recreational activities in and on the water.

This section in no way modifies the obligations of the City of New York to achieve secondary treatment as required by the Federal Water Pollution Control Act and any consent decrees entered into by the Environmental Protection Agency, the State of New York, the City of New York, and other parties, or any compliance orders or schedules imposed by the Administrator. It does not permit the indefinite discharge of raw sewage at the March 15, 1986 level. Rather, it places a limitation on the amount of discharge of raw sewage which may occur as the City continues its efforts to achieve full secondary treatment of all of its sewage.

### SECTION 31

This section allows the Okolona Sewer Construction District in Jefferson County, Kentucky, to continue to operate its wastewater treatment works—without being required to use any other wastewater treatment facility—until completion of the West County Wastewater Treatment Plant in Jefferson County. The section also requires the Administrator to issue a National Pollutant Discharge Elimination System permit to effectuate the purpose of the section.

This provision is necessary to prevent the Okolona Sewer Construction District from being forced to connect with and discharge into an existing interceptor line leading to a publicly owned treatment works which discharges into the Ohio River. Not only would such a connection lead to unnecessary additional user charges for a community comprising a high percentage of retirees living on fixed and relatively low incomes, but it would also result in Okolona's secondary-treatment-quality effluent being diverted to an existing wastewater treatment plant which is itself incapable of treating incoming wastes to secondary levels. The Committee believes that requiring Okolona to make such a connection would be economically wasteful and directs the Administrator to allow the District's plant to remain in operation with the necessary NPDES permit until construction is completed on a new regional wastewater treatment plant.

## SECTION 32

This section authorizes and directs the Administrator of the Environmental Protection Agency to make grants to the Metropolitan District Commission, Massachusetts, for a project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts. The Federal share of the project shall not exceed 75 percent of the cost of carrying out the improvements. There is authorized to be appropriated to carry out this section $10,000,000 per fiscal year for each of the fiscal years 1985, 1986 and 1987.

## SECTION 33

This section provides that, notwithstanding any provision of the Federal Water Pollution Control Act, the Administrator of the Environmental Protection Agency shall pay, to the extent provided in appropriation Acts, in the same proportion as the Federal share of other project costs, all expenses for the relocation of facilities for the distribution of natural gas with respect to the entire wastewater treatment works known as the Oakwood Beach (EPA Grant Number 360932) and Red Hook (EPA Grant Number 360394) projects, New York. There is authorized to be appropriated for fiscal years beginning after September 30, 1984, not to exceed $9,000,000 to carry out the section.

## SECTION 34

This section provides that, in order to protect the public health, environment, and water quality endangered by the destruction of the Chippewa Township, Pennsylvania, sewage treatment facility and the resultant raw sewage discharge into Brady's Run, Pennsylvania, the Administrator of the Environmental Protection Agency is directed to undertake such measures as may be necessary (including but not limited to removal of accumulated raw sewage) to restore the quality of the waters adversely affected by such discharge.

The explosion that destroyed the Chippewa sewage treatment facility led to the discharge of millions of gallons of raw sewage into Brady's Run and the one mile section of the Beaver River, from where it enters the Ohio River upstream to Brady's Run.

Section 34 requires the Administrator to remove the sewage deposited in this reach of the Beaver River.

### SECTION 35

This section directs the Administrator to study the feasibility and desirability of eliminating the regulation of discharges of pollutants into the navigable waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant. A report, with recommendations, is to be submitted to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works within one year of the date of enactment of H.R. 3282.

### SECTION 36

This section directs the Administrator of the Environmental Protection Agency to study the effectiveness on waste treatment of innovative and alternative waste water treatment processes and techniques which have been utilized in treatment works constructed under the Act. In conducting the study, the Administrator is to compile information, by State, on the types of such processes and techniques utilized and on the number of facilities constructed with such processes and techniques, and a description of such processes and techniques which have not performed to design standards. The Administrator must also determine which States have not obligated the full amount set aside for innovative and alternative facilities constructed with such processes and techniques and the reasons therefor. The Administrator is to submit a report on this study to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works not later than two years after the date of enactment, along with recommendations for providing more effective incentives for innovative and alternative wastewater treatment processes and techniques.

### SECTION 37

Subsection (a) of this section directs the Administrator to study the water quality improvements which have been achieved by application of best available technology. The study must include an analysis of the effectiveness of, and the costs and benefits associated with, application of best available technology and must also include an analysis of methods of improving our Nation's water quality program and its effectiveness. Subsection (a) requires the Administrator, in analyzing methods of improving the water quality program, to study site-specific levels of treatment which will achieve the water quality goals of the Federal Water Pollution Control Act in a cost effective manner.

Subsection (b) requires the Administrator, within two years of the date of enactment of H.R. 3282, to submit a report on the results of the study, together with recommendations for improving the Nation's water quality program and it effectiveness, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works.

### SECTION 38

This section directs the Administrator to study the testing procedures for analysis of pollutants. The study shall include, but is not limited to, an analysis of the adequacy and standardization of testing procedures. In conducting the analysis of the standardization of such procedures, the Administrator is to consider the extent to which these procedures are consistent with comparable procedures established under other Federal laws. A report on the results of this study is to be submitted within one year, together with recommendations for modifying testing procedures, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works.

Subsection (b) of section 38 directs the Administrator, biennially after the date of submission of the report on testing procedures, to conduct a state-of-the-art review of the testing procedures for the analysis of pollutants for the purpose of determining the adequacy and effectiveness of such procedures and, based on the results of such review, to submit to the Committees recommendations for modifying testing procedures to improve their effectiveness.

### SECTION 39

This section directs the Administrator of the Environmental Protection Agency to conduct a study and make a report with recommendations concerning a number of pretreatment-related issues.

Subsection (a) directs the Administrator to study the adequacy of data on environmental impacts of toxic industrial pollutants discharged through publicly owned treatment works; the extent that secondary treatment by these treatment works removes toxic pollutants; the capability of publicly owned treatment works to grant pretreatment removal credits authorized under section 307(b)(1) of the Federal Water Pollution Control Act; possible alternative regulatory strategies for protecting the operations of publicly owned treatment works from industrial discharges, including an evaluation of how effective each strategy might be in achieving the goals of H.R. 3282 and the Federal Water Pollution Control Act, and, the adequacy under each of the strategies studied of Federal, State, and local resources to establish, implement, and enforce multiple pretreatment limits for toxic pollutants.

Subsection (b) requires the Administrator to submit a report on the study performed under subsection (a), along with recommendations for improving the effectiveness of pretreatment requirements, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works within two years of date of enactment of H.R. 3282.

Section 39 requires the Administrator to study the effectiveness of the National Pretreatment Program. This study is not intended to determine the need for pretreatment or in any way to delay ongoing program implementation. Rather, the study should be used to update and expand information available to the Agency on such matters as the impact on publicly owned treatment works of industrial discharges and the pollution removal effectiveness of publicly owned treatment works technology. In addition, the study should also be used to evaluate the effectiveness—both in terms of pollution removal and cost—of industrial pretreatment controls.

Section 39(a)(3) requires the Administrator to study the capability of publicly owned treatment works to revise pretreatment requirements under section 307(b)(1) of the Federal Water Pollution Control Act. The Committee intends that EPA focus particular attention on the extent to which EPA's pretreatment removal credits program is presently effectuating the Congressional intent behind section 307(b)(1). Congress added the credit system to the Act in 1977 because of its concern that EPA's categorical pretreatment standards could result in costly redundant treatment by industry and publicly owned treatment works. The Committee also intends that, in implementing section 39(a)(3), the Administrator shall examine the capability of publicly owned treatment works to establish and enforce requirements more stringent than or different from national categorical standards.

The Committee's reference in section 39(a)(4) to possible alternative regulatory strategies is meant to include, among other things, consideration of sludge quality in evaluating strategy effectiveness. Section 39(a)(5)'s reference to "adequacy of . . . resources" is meant to include evaluation of technical expertise and availability of analytical methods as well as financial and staffing level evaluations.

## SECTION 40

This section provides that, in order to protect the Federal and other investment in treatment works, the Administrator shall conduct a study of the problem of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate this problem, and the range of available options to deal with the effects.

The study required is to be conducted in consultation with the Los Angeles City and County sanitation agencies which have observed examples of corrosion, probably caused by sulfides. The Administrator shall submit a report on the results of the study, together with recommendations for measures to reduce the corrosion of treatment works, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate within one year of the date of enactment of H.R. 3282. There is authorized to be appropriated $2,000,000 to carry out this section for fiscal years beginning after September 30, 1984.

In recent years in Southern California, it has become apparent that sulfide corrosion of concrete sewers and wastewater treatment facilties is creating severe damages. The causes of sulfide corrosion of concrete structures include high strength sewage, high temperature, acidic wastewater, lack of aeration of sewage and low cleaning velocities in the sewer system. The climatic conditions in Southern California and the use of sanitary sewers which do not accept rainfall tend to promote conditions causing sulfide corrosion. The lack of rainfall to eliminate the periodic flushing and cleaning of the sewer slimes which create sulfides. In less desert-like climates this periodic flushing of sewers tends to reduce sewer corrosion problems.

The existence of sulfides in large concrete sewers throughout the Los Angeles basin results in the formation of sulfuric acid which corrodes the sewers and creates the potential for sewer collapse.

It is necessary to perform an extensive evaluation of the interactions of the many factors that may be causing sulfide corrosion of sewerage structures. The interrelated remedial effects of the periodic cleansing of concrete sewers, the effectiveness of adding chemicals that eliminate sewer slimes, the effect of in-sewer aeration of wastewater and other remedial measures need to be properly evaluated. This amendment will provide for funding for the Administrator to work cooperatively with the Los Angeles County sanitation agencies to develop methods to deal with this problem.

## COMPLIANCE WITH CLAUSE 2(l) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

(1) With reference to clause 2(l)(3)(A) of rule XI of the House of Representatives, the Subcommittee on Investigations and Oversight did not hold hearings on the specific subject matter of the legislation.

That Subcommittee has, however, conducted investigations of the implementation of various aspects of the Federal Water Pollution control Program over the past several years, and has issued a number of reports on these matters.

The Subcommittee on Water Resources held hearings on the bill.

(2) With respect to clause 2(l)(3)(B) of rule XI of the House of Representatives, H.R. 3282, as reported, does not provide new budget authority or increase tax expenditures. Accordingly, a statement pursuant to section 308(a) of the Congressional Budget Act is not required.

(3) With reference to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee has received a report prepared by the Congressional Budget Office under section 403 of the Congressional Budget Act. That report is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE.
*Washington, D.C., June 6, 1984.*

Hon. JAMES J. HOWARD,
*Chairman, Committee on Public Works and Transportation,*
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 3282, the Water Quality Renewal Act of 1984, as ordered reported on June 6, 1984.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3282.
2. Bill title: Water Quality Renewal Act of 1984.
3. Bill status: As ordered reported by the House Committee on Public Works and Transportation, June 6, 1984.
4. Bill purpose: H.R. 3282 would reauthorize water quality programs administered by the Environmental Protection Agency (EPA), including the construction grants program. H.R. 3282 would

also authorize appropriations of $1.6 billion in each of the fiscal years 1985 through 1988 for 80 percent matching grants to aid states in establishing water pollution control revolving funds. The bill would authorize $150 million per year for nonpoint source control grants and would raise the authorization ceiling from $200 million to $500 million on grants to treat combined overflow into marine estuaries.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

| | 1984 | 1985 | 1986 | 1987 | 1988 | 1989 |
|---|---|---|---|---|---|---|
| Estimated authorization level | 621 | 6,169 | 6,460 | 6,460 | 6,450 | 775 |
| Less: Existing authorization or appropriation | 187 | 2,600 | | | | |
| Net additional authorization level | 434 | 3,569 | 6,460 | 6,460 | 6,450 | 775 |
| Estimated outlays | 241 | 1,822 | 2,880 | 3,860 | 5,028 | 4,314 |

An additional $6.0 billion in outlays would occur after fiscal year 1989.

The costs of this bill fall within budget function 300.

### BASIS OF ESTIMATE

The authorization levels are those specified in the bill, plus estimated 1985 authorizations totaling $260 million for the Newtown, Chippewa Township and San Diego projects. For purposes of this estimate, it is assumed that the full amounts authorized will be appropriated for each fiscal year. The 1984 authorization represents the difference between the amounts authorized in the bill for 1984 and appropriations to date for those programs with new 1984 authorizations. The 1984 authorization level also includes $21.5 million for specific projects authorized in Section 29, with no effective date specified. Outlays are estimated on the basis of historical spending patterns and information obtained from the EPA.

6. Estimated cost to State and local governments: CBO has not completed its estimate of the costs to state and local governments. This estimate will be transmitted separately at a later date.

7. Estimate comparison: None.

8. Previous CBO estimate: On May 21, 1984, CBO prepared a cost estimate for H.R. 3282, as ordered reported by the House Committee on Public Works and Transportation, May 10, 1984. That version of the bill contained provisions that were omitted in the version ordered reported on June 6, 1984.

9. Estimate prepared by Deb Reis.

10. Estimate approved by C. G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

(4) With reference to clause (2)(l)(3)(D) of rule XI of the Rules of House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

(5) With reference to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the following information is provided:

The effect of carrying out H.R. 3282, as reported, should be negligible with respect to prices and costs.

## COST OF LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires a statement of the estimated costs to the United States which would be incurred in carrying out H.R. 3282, as reported, in Fiscal Year 1984, and each of the following five years. However, under paragraph (d) of clause 7 its provisions do not apply when the Committee has received a timely report from the Congressional Budget Office.

## COMMITTEE ACTION AND VOTE

The Committee, in compliance with rule XI(2)(1)(2)(A) of the Rules of the House of Representative, reports favorably the bill H.R. 3282, as amended.

The Committee ordered the bill reported by voice vote.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

## FEDERAL WATER POLLUTION CONTROL ACT

## TITLE I—RESEARCH AND RELATED PROGRAMS

### DECLARATION OF GOALS AND POLICY

SEC. 101. (a) The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; **[**and**]**

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to

eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans[.]*; and*

*(7) it is the national policy that plans for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.*

* * * * * * *

RESEARCH, INVESTIGATIONS, TRAINING, AND INFORMATION

SEC. 104. (a) * * *

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(h)*(1)* The Administrator is authorized to enter into contracts with, or make grants to, public or private agencies and organizations and individuals for (A) the purpose of developing and demonstrating new or improved methods for the prevention, removal, reduction, and elimination of pollution in lakes, including the undesirable effects of nutrients and vegetation, and (B) the construction of publicly owned research facilities for such purpose.

*(2) The Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of enactment of this paragraph a lake restoration guidance manual establishing procedures to guide future State and local efforts to improve water quality in lakes.*

* * * * * * *

(u) There is authorized to be appropriated (1) not to exceed $100,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, and not to exceed $14,039,000 for the fiscal year ending September 30, 1980, and not to exceed $20,697,000 for the fiscal year ending September 30, 1981, and not to exceed $22,770,000 for the fiscal year ending September 30, 1982, *and not to exceed $22,770,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,* for carrying out the provisions of this section, other than subsections (g) (1) and (2), (p), (r), and (t), except that such authorizations are not for any research, development, or demonstration activity pursuant to such provisions; (2) not to exceed $7,500,000 for fiscal years 1973, 1974, and 1975, $2,000,000 for fiscal year 1977, $3,000,000 for fiscal year 1978, $3,000,000 for fiscal year 1979, $3,000,000 for fiscal year 1980, $3,000,000 for fiscal year 1981, [and $3,000,000 for fiscal year 1982] *$3,000,000 for fiscal year 1982, and $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,* for carrying out the provisions of subsection (g)(1); (3) not to exceed $2,500,000 for fiscal year 1973, 1974, and 1975, $1,000,000 for fiscal year 1977, $1,500,000 for fiscal year 1978, $1,500,000 for fiscal year 1979, $1,500000 for fiscal year 1980, $1,500,000 for fiscal year 1981, [and $1,500,000 for fiscal year

1982] *$1,500,000 for fiscal year 1982, and $1,500,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988* for carrying out the provisions of subsection (g)(2); (4) not to exceed $10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (p); (5) not to exceed $15,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (r); and (6) not to exceed $10,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (t).

* * * * * * *

### GRANTS FOR POLLUTION CONTROL PROGRAMS

SEC. 106. (a) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section—

(1) $60,000,000 for the fiscal year ending June 30, 1973; and

(2) $75,000,000 for the fiscal year ending June 30, 1974 and the fiscal year ending June 30, 1975, $100,000,000 per fiscal year for the fiscal years 1977, 1978, 1979, and 1980, $75,000,000 per fiscal year for the fiscal years 1981 and 1982 , *and $75,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, and 1988*;

for grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly or through apropriate State law enforcement officers or agencies.

* * * * * * *

### DEFINITIONS AND AUTHORIZATIONS

SEC. 112. (a) * * *

* * * * * * *

(c) There are authorized to be appropriated $25,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, $6,000,000 for the fiscal year ending September 30, 1977, $7,000,000 for the fiscal year ending September 30, 1978, $7,000,000 for the fiscal year ending September 30, 1979, $7,000,000 for the fiscal year ending September 30, 1980, $7,000,000 for the fiscal year ending September 30, 1981, [and $7,000,000 for the fiscal year ending September 30, 1982,] $7,000,000 for the fiscal year ending September 30, 1982, $7,000,000 for the fiscal year ending September 30, 1983, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1984, to carry out sections 109 through 112 of this Act.

* * * * * * *

## TITLE II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

### PURPOSE

SEC. 201. (a) * * *

* * * * * * *

(g)(1) The Administrator is authorized to make grants to any State, municipality, or intermunicipal or interstate agency for the construction of publicly owned treatment works. On and after October 1, 1984, grants under this title shall be made only for projects for secondary treatment or more stringent treatment, or any cost effective alternative thereto, new interceptors and appurtenances, **[**and**]** *new collector sewers and appurtenances,* infiltration-in-flow correction**[**.**]**, *and projects to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows.* Notwithstanding the preceding sentence, the Administrator may make grants on and after October 1, 1984, for any project within the definition set forth in section 212(2) of this Act, other than for a project referred to in the preceding sentence, except that not more than 20 per centum (as determined by the Governor of the State) of the amount allotted to a State under section 205 of this Act for any fiscal year shall be obligated in such State under authority of this sentence.

(n)(1) On and after October 1, 1984, upon the request of the Governor of an affected State, the Administrator is authorized to use funds available to such State under section 205 to address water quality problems due to the impacts of discharges from combined storm water and sanitary sewer overflows, which are not otherwise eligible under this subsection, where correction of such discharges is a major priority for such State.

(2) Beginning fiscal year 1983, the Administrator shall have available **[**$200,000,000**]** *$500,000,000* per fiscal year in addition to those funds authorized in section 207 of this Act to be utilized to address water quality problems of marine bays and estuaries subject to lower levels of water quality due to the impacts of discharges from combined storm water and sanitary sewer overflows from adjacent urban complexes, not otherwise eligible under this subsection. Such sums may be used as deemed appropriate by the Administrator as provided in paragraphs (1) and (2) of this subsection, upon the request of and demonstration of water quality benefits by the Governor of an affected State.

* * * * * * *

### FEDERAL SHARE

SEC. 202. (a)(1) The amount of any grant for treatment works made under this Act from funds authorized for any fiscal year beginning after June 30, 1971, *and ending before October 1, 1984,* shall be 75 per centum of the cost of construction thereof (as approved by the Administrator), and for any fiscal year beginning on or after October 1, 1984, shall be **[**55**]** *65* per centum of the cost of construction thereof (as approved by the Administrator), unless modified to a lower percentage rate uniform throughout a State by the Governor of that State with the concurrence of the Administrator. Within ninety days after the enactment of this sentence the Administrator shall issue guidelines for concurrence in any such modification, which shall provide for the consideration of the unobligated balance of sums allocated to the State under section 205 of this Act, the need for assistance under this title in such State, and the availability of State grant assistance to replace the Federal share reduced by such modification. The payment of any such reduced Federal share shall not constitute an obligation on the part of the United States or a claim on the part of any State or grantee to reimbursement for the portion of the Federal share reduced in any such State. Any grant (other than for reimbursement) made prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 from any funds authorized for any fiscal year beginning after June 30, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under this section. Notwithstanding the first sentence of this paragraph, in any case where a primary, secondary, or advanced waste treatment facility or its related interceptors or a project for infiltration-inflow correction *or a project to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows* has received a grant for erection, building, acquisition, alteration, remodeling, improvement, extension, or correction before October 1, 1984, all segments and phases of such facility, interceptors, and project for infiltration-in-flow correction *and project to address such problems* shall be eligible for grants at 75 per centum of the cost of construction thereof. *Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this title has been made to the Administrator before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, such project shall be eligible for grants at 75 per centum of the cost of construction thereof.*

* * * * * * *

(3) In addition to any grant made pursuant to paragraph (2) of this subsection, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of any facilities constructed with a grant made pursuant to paragraph (2) if the Administrator finds that such facilities have not met design performance specifications unless such failure is attributable to negligence on the part of any person and if such failure has significantly increased capital or operating and maintenance expenditures. *In addition, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of biodisc equipment (rotating biological contractors) in any publicly owned treatment works if the Administrator finds that such equipment has not met design performance specifications, unless such failure is attributable to negligence on the part of any person, and if such failure has significantly increased capital or operating and maintenance expenditures.*

* * * * * * *

### PLANS, SPECIFICATIONS, ESTIMATES, AND PAYMENTS

SEC. 203. (a) Each applicant for a grant shall submit to the Administrator for his approval, plans, specifications, and estimates for each proposed project for the construction of treatment works for which a grant is applied for under section 201(g)(1) from funds allotted to the State under section 205 and which otherwise meets the requirements of this Act. The Administrator shall act upon such plans, specifications, and estimates as soon as practicable after the same have been submitted, and his approval of any such plans, specifications, and estimates shall be deemed a contractual obligation of the United States for the payment of its proportional contribution to such project. *Before taking final action on such plans, specifications, and estimates, the Administrator shall enter into a written agreement with the applicant which establishes and specifies which items of the proposed project are eligible for Federal payments under this section. The Administrator may not refuse to make payments for the Federal share of those costs of any item specified in such an agreement which are incurred on such project.* In the case of a treatment works that has an estimated total cost of $800,000 or less (as determined by the Administrator), and the population of the applicant municipality is twenty-five thousand or less (according to the most recent United States census), upon completion of an approved facility plan, a single grant may be awarded for the combined Federal share of the cost of preparing construction plans and specifications, and the building and erection of the treatment works.

* * * * * * *

### LIMITATIONS AND CONDITIONS

SEC. 204. (a) Before approving grants for any project for any treatment works under section 201(g)(1) the Administrator shall determine—

**[**(1) that such works are included in any applicable areawide waste treatment management plan developed under section 208 of this Act;

**[**(2) that such works are in conformity with any applicable State plan under section 303(e) of this Act;**]**

*(1) that any required areawide waste treatment management plan under section 208 of this Act (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment works will be included in such plan;*

*(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 303(e) of this Act and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with section 305(b) of this Act;*

* * * * * * *

(b)(1) Notwithstanding any other provision of this title, the Administrator shall not approve any grant for any treatment works under section 201(g)(1) after March 1, 1973, unless he shall first have determined that the applicant (A) has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the Administrator, will pay its proportionate share (except as otherwise provided in this paragraph) of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant; (B) has legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction, as determined by the Administrator. In any case where an applicant which, as of the date of enactment of this sentence, uses a system of dedicated ad valorem taxes and the Administrator determines that the applicant has a system of charges which results in the distribution of operation and maintenance costs for treatment works within the applicant's jurisdiction, to each user class, in proportion to the contribution to the total cost of operation and maintenance of such works by each user class (taking into account total waste water loading of such works, the constituent elements of the waste, and other appropriate factors), and such applicant is otherwise in compliance with clause (A) of this paragraph with respect to each industrial user, then such dedicated ad valorem tax system shall be deemed to be the user charge system meeting the requirements of clause (A) of this paragraph for the residential user class and such small non-residential user classes as defined by the Administrator. In defining small non-residential users, the Administrator shall consider the volume of wastes discharged into the treatment works by such users and the constituent elements of such wastes as well as such other factors as he deems appropriate. *A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (a) of this paragraph, if the Administrator determines that such system was adopted after public notice and hearing.*

* * * * * * *

### ALLOTMENT

SEC. 205. (a) * * *

* * * * * * *

(c)(1) * * *

(2) Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1982, 1983, and 1985 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981. *Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1986, 1987, and 1988 shall be allotted for each year by the Administrator not later than the tenth day which begins after the date of enactment of the Water Quality Renewal Act of 1984.* Notwithstanding any other provision of law, sums authorized for the fiscal year

ending September 30, 1982, shall be allotted in accordance with table 3 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives. Sums authorized for the fiscal years ending September 30, 1983, September 30, 1984, [and September 30, 1985,] *September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,* shall be allotted in accordance with the following table:

* * * * * * *

(c) For the fiscal years 1978, 1979, 1980, no State shall receive less than one-half of 1 per centum of the total allotment under subsection (c) of this section except that in the case of Guam, Virgin Islands, American Samoa, and the Trust Territories not more than [thirty-three one-hundreds] *two-thirds* of 1 per centum in the aggregate shall be allotted to all four of these jurisdictions. For the purpose of carrying out this subsection there are authorized to be appropriated, subject to such amounts as are provided in appropriation Acts, not to exceed $75,000,000 for each of fiscal years 1978, 1979, 1980, 1981, 1982, 1983, 1984, [and 1985] *1985, 1986, 1987, and 1988.* If for any fiscal year the amount appropriated under authority of this subsection is less than the amount necessary to carry out this subsection, the amount each State receives under this subsection for such year shall bear the same ratio to the amount such State would have received under this subsection in such year if the amount necessary to carry it out had been appropriated as the amount appropriated for such year bears to the amount necessary to carry out this subsection for such year.

* * * * * * *

(g)(1) The Administrator is authorized to reserve each fiscal year not to exceed 2 per centum of the amount authorized under section 207 of this title for purposes of the allotment made to each State under this section on or after October 1, 1977, except in the case of any fiscal year beginning on or after October 1, 1981, and ending before October 1, [1985,] *1988,* in which case the percentage authorized to be reserved shall not exceed 4 per centum, or $400,000 whichever amount is the greater. Sums so reserved shall be available for making grants to such State under paragraph (2) of this subsection for the same period as sums are available from such allotment under subsection (d) of this section, and any such grant shall be available for obligation only during such period. Any grant made from sums reserved under this subsection which has not been obligated by the end of the period for which available shall be added to the amount last allotted to such State under this section and shall be immediately available for obligation in the same manner and to the same extent as such last allotment. Sums authorized to be reserved by this paragraph shall be in addition to and not in lieu of any other funds which may be authorized to carry out this subsection.

* * * * * * *

*(3) The Administrator shall reserve each fiscal year beginning after September 30, 1984, $900,000 from the sums available to the State of New York under this subsection for such fiscal year, $900,000 from the sums available to the State of New Jersey under*

*this subsection for such fiscal year, and $200,000 from the sums available to the State of Connecticut under this subsection for such fiscal year. Sums reserved under this paragraph shall be used by the Administrator to make a grant for each fiscal year to the Interstate Sanitation Commission established by such States by interstate compact to carry out the functions of such Commission under this Act.*

(i) Not less than one-half of one per centum of funds allotted to a State for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, September 30, 1983, September 30, 1984, **[**and September 30, 1985,**]** *September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,* under subsection (a) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the preceding sentence, a total of two per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 per centum of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (a) of this section shall be expended only for increasing grants for construction of treatment works from 75 per centum to 85 per centum pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 per centum nor more than 7½ per centum of the funds allotted to such State for any fiscal year beginning after September 30, 1981, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.

(j)(1) The Administrator shall reserve each fiscal year not to exceed pet centum of the sums allotted and available for obligation to each State under this section for each fiscal year beginning on or after October 1, 1981, or $100,000, whichever amount is the greater.

(2) Such sums shall be used by the Administrator to make grants to the States to carry out water quality management planning, including, but not limited to—

(A) identifying most cost effective and locally acceptable facility and non-point measures to meet and maintain water quality standards;

(B) developing an implementation plan to obtain State and local financial and regulatory commitments to implement measures developed under subparagraph (A);

(C) determining the nature, extent, and causes of water quality problems in various areas of the State and interstate region, and reporting on these annually; and

(D) determining those publicly owned treatment works which should be constructed with assistance under this title, in which areas and in what sequence, taking into account the relative degree of effluent reduction attained, the relative contributions to water quality of other point or nonpoint sources, and the consideration of alternatives to such construction, and implementing section 303(e) of this Act.

(3) In carrying out planning with grants made under paragraph (2) of this subsection, a State shall develop jointly with local, regional, and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undersignated public comprehensive planning organizations to carry out the purposes of this subsection. *In giving such priority, the State shall allocate at least 50 percent of the amount granted to such State for a fiscal year under this subsection to regional and interstate public comprehensive planning organizations in such State, except in any fiscal year for which the Administrator and the Governor of such State determine jointly that allocation of at least 50 percent to such organizations will not substantially assist in achieving the goals of this Act.*

* * * * * * *

*(l) One-quarter of one percent of any amount appropriated under section 207 of this Act for any fiscal year beginning after September 30, 1984, shall be reserved by the Administrator for carrying out investigations and audits authorized by this Act of projects for which funds are made available under this title.*

* * * * * * *

### AUTHORIZATION

SEC. 207. There is authorized to be appropriated to carry out this title, other than sections 206(e), 208, [and 209,] *, 209, and 220,* for the fiscal year ending June 30, 1973, not to exceed $5,000,000,000, for the fiscal year ending June 30, 1974, not to exceed $6,000,000,000, and for the fiscal year ending June 30, 1975, not to exceed $7,000,000,000, and, subject to such amounts as are provided in appropriation Acts for the fiscal year ending September 30, 1977, $1,000,000,000 for the fiscal year ending September 30, 1978, $4,500,000,000 and for the fiscal year ending September 30, 1979, September 30, 1980, not to exceed $5,000,000,000; for the fiscal years ending September 30, 1981, not to exceed $2,548,837,000; [and for the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, and Sepbember 30, 1985, not to exceed $2,400,000,000 per fiscal year] *for the fiscal years ending September 30, 1982, and September 30, 1983, not to exceed $2,400,000,000 per fiscal year for the fiscal year ending Sseptebmr 30, 1984, not to exceed $2,400,000,000; for the fiscal year ending September 30, 1985, not to exceed $2,900,000,000; and for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, not to exceed $3,400,000,000 per fiscal year.*

### AREAWIDE WASTE TREATMENT MANAGEMENT

SEC. 208. (a) * * *

* * * * * * *

(f)(1) * * *

* * * * * * *

(3) Each applicant for a grant under this subsection shall submit to the Administrator for his approval each proposal for which a

grant is applied for under this subsection. The Administrator shall act upon such proposal as soon as practicable after it has been submitted, and his approval of that proposal shall be deemed a contractual obligation of the United States for the payment of its contribution to such proposal, subject to such amounts as are provided in appropriation Acts. There is authorized to be appropriated to carry out this subsection not to exceed $50,000,000 for the fiscal year ending June 30, 1973, not to exceed $100,000,000 for the fiscal year ending June 30, 1974, and not to exceed $150,000,000 per fiscal year for the fiscal years ending June 30, 1975, September 30, 1977, September 30, 1978 September 30, 1979, and September 30, 1980, and not to exceed $100,000,000 per fiscal year for the fiscal years ending September 30, 1981, [and September 30, 1982.] *September 30, 1982, September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988.*

* * * * * * *

(j)(1) * * *

* * * * * * *

(9) There are hereby authorized to be appropriated to the Secretary of Agriculture $200,000,000 for fiscal year 1979, $400,000,000 for fiscal year 1980, $100,000,000 for fiscal year 1981, and $100,000,000 for fiscal year 1982, *and $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,* to carry out this subsection. The program authorized under this subsection shall be in addition to, and not in substitution of, other programs in such area authorized by this or any other public law.

* * * * * * *

### *GRANTS TO STATES FOR REVOLVING FUNDS*

*SEC. 220. (a) The Administrator shall make a grant to each State of the funds allotted to such State under this section for any fiscal year for deposit in a Water Pollution Control Revolving Fund established by such state under subsection (b)(2) of this section, for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works (as defined in section 212 of this Act) which are publicly owned.*

*(b)(1) A grant shall not be made for a fiscal year to a State under this section unless the State has first deposited in the fund established by such State under this section an amount equal to 20 percent of the amount allotted to such State for such fiscal year.*

*(2) Each State shall submit to the Administrator annually a certification—*

*(A) that upon completion of any project for treatments works for which financial assistance is made available under this section, discharges from such treatment works will meet all applicable requirements necessary to achieve applicable State and Federal water quality standards; and*

*(B) that such State will comply with all provisions of this section.*

*(3) Each State shall establish a Water Pollution Control Revolving Fund to provide assistance under this section. Such State shall deposit in such fund any Federal funds allotted to such State under this section, any amounts received by such State for repayment of loans made by such State with amounts in such fund, any amounts required to be deposited in such fund under subsection (b)(1), and any additional funds (except for funds received under any other section of this title) which such State wishes to deposit in such fund.*

*(c)(1) A State may use amounts in the fund established by such State under this section only to make loans, loan guarantees, payments to reduce interest on loans and loan guarantees, bond interest subsidies, and bond guarantees to municipalities and intermunicipal and interstate agencies.*

*(2) In addition, to the extent provided by State law, any State may issue revenue or general obligation bonds using amounts in the fund established by such State under this section as a source of revenue or security for the payment of interest and principal on such bonds, if the proceeds of the sale of such bonds are deposited in such fund. No municipality or intermunicipal or interstate agency shall receive a loan from the fund unless such municipality or agency establishes a dedicated source of revenue for the repayment of such loan.*

*(3) A State may provide assistance under this section to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Administrator under any other section of this title.*

*(4) A State may provide financial assistance from the fund established by such State under this section for any project which is on the State's priority list under section 216 of this Act.*

*(d) Notwithstanding any other provision of this section, a State may make assistance available under this section from the fund established by such State under this section to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works. If the recipient of a grant under section 201(g) of this Act for construction of treatment works receives an allowance under section 201(l)(1) for non-Federal funds expended for such planning and preparation and such recipient has received a loan under this first sentence of this subsection, such recipient shall promptly repay such loan to the extent of such allowance.*

*(e)(1) Each State shall annually make a full and complete report to the Administrator concerning the use of Federal funds made available under this section in such manner as the Administrator shall prescribe.*

*(2) The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of Federal funds shall be conducted in accordance with the auditing procedures of the General Accounting Office.*

*(f) The provisions of this title shall not apply to financial assistance under this section, except to the extent provided in this section.*

*(g)(1) There is authorized to be appropriated to carry out this section not to exceed $1,600,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988.*

*(2) Sums authorized to be appropriated to carry out this section for any fiscal year shall be allotted by the Administrator in the same manner and in accordance with the same table as if such funds were authorized to be appropriated under section 207 of this Act for such fiscal year. Sums allotted to a State for a fiscal year shall remain available for a grant to such State for the fiscal year for which authorized and for the following fiscal year. Any funds granted to a State for a fiscal year under this section which are not utilized by such State for any of the purposes of this section during such fiscal year and the following fiscal year shall be repaid to the Administrator for reallotment among the other States.*

## TITLE III—STANDARDS AND ENFORCEMENT

### EFFLUENT LIMITATIONS

SEC. 301. (a) Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.

(b) In order to carry out the objective of this Act there shall be achieved—

(1)(A)* * *

(2)(A) * * *

* * * * * * *

[(C) not later than July 1, 1984, with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph;]

*(C) for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established;*

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 307 of this Act which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitation in accordance with subparagraph (A) of this paragraph [not later than three years after the date such limitations are estabished] *as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established;*

(E) not later than July 1, [1984,] *1987,* effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 304(a)(4) of this Act shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(4) of this Act; and

[(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph not later than 3 years after the date such limitations are established, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.]

*(F) for all pollutants (other than those subject to subparagraph (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established.*

* * * * * * *

(h) The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(7) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit.

[For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act.] *For the purposes of this subsection, the phrase "the discharge of any* *pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone.* A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters.

* * * * * * *

(k) In the case of any facility subject to a permit under section 402 which proposes to comply with the requirements of subsection (b)(2)(A) of this section by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 402, in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) of this section no later than **[**July 1, 1987,**]** *two years after the date for compliance with such effluent limitation which is otherwise applicable under such subsection,* if it is also determined that such innovative system has the potential for industrywide application.

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*(n)(1) Notwithstanding any other provision of this Act, in the case of any coal remining operation, effluent limitations under this Act shall apply only to that portion of the discharge from such operation which exceeds the discharge from the site of such operation immediately before the beginning of such operation.*

*(2) For purposes of this subsection, the term "coal remining operation" means any coal mining operation which begins after the date of enactment of this subsection at a site at which coal mining was conducted before such date which was not, at the time such mining was conducted, subject to the requirements of title V of the Surface Mining Control and Reclamation Act of 1977.*

* * * * * * *

### INFORMATION AND GUIDELINES

SEC. 304. (a)(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters. *In developing, publishing, and revising criteria under this paragraph after the date of enactment of this sentence, the Administrator shall consider, among other things, the effects on the ecosystem of (i) water hardness, (ii) pH, (iii) chemical and physical interactions, (iv) persistence of pollutants and the long-term effects of pollutants, (v) sedimentation from chemical reaction of pollutants, (vi) the absorptive properties of sediments, (vii) resuspension, and (viii) bio-uptake. New or revised criteria under this paragraph should be established so as to provide an ample margin of safety to protect human health and fish and wildlife resources. Whenever, in developing new or revised criteria under this paragraph with respect to a pollutant, the Administrator determines that a well-founded and significant difference of opinion exists as to the latest scientific and research knowledge on the matters referred to in the preceding sentence, the Administrator shall publish a description of such difference of opinion along with the publication of such criteria.*

* * * * * * *

(k)(1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 *and 319* of this Act.

(2) The Administrator is authorized to transfer to the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, any funds appropriated under paragraph (3) of this subsection to supplement funds otherwise appropriated to programs authorized pursuant to any agreement under paragraph (1).

(3) There is authorized to be appropriated to carry out the provisions of this subsection, $100,000,000 per fiscal year for the fiscal years 1979 through **[**1983.**]** *1988.*

*(l)(1) Not later than one year after the date of enactment of this subsection, the Administrator, in cooperation with the States and after notice and opportunity for public comment, shall publish in the Federal Register a list of all navigable waters in each State for which the Administrator does not expect the applicable standard*

*under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a). For each segment of the navigable waters included on such list, the Administrator shall determine the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source. At a minimum, the Administrator shall consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after the date of enactment of this subsection.*

*(2) Not later than one year after the date of publication of the list required by paragraph (1) of this subsection, the Administrator, in cooperation with the States, shall issue proposed regulations setting forth, for each listed segment of the navigable waters, an individual control strategy. Each individual control strategy shall produce a reduction in the discharge of toxic pollutants from point sources identified by the Administrator under paragraph (1) through the establishment of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy. Not later than 180 days after issuing the proposed regulations, the Administrator shall promulgate each individual control strategy as a final regulation.*

*(3) The Administrator shall implement each individual control strategy promulgated under paragraph (2) by modifying or requiring the modification of permits under section 402 of this Act.*

* * * * * * *

### TOXIC AND PRETREATMENT EFFLUENT STANDARDS

SEC. 307. (a)(1) * * *

(b)(1)

*(5)(A) Upon the request of any source which is subject to two or more pretreatment standards which are promulgated under this subsection before the date of enactment of this paragraph and for which more than one compliance date is prescribed, the Administrator may establish a single compliance date for all such standards in accordance with this paragraph. Such a single compliance date shall be not later than one year after the first of such compliance dates or not later than the last of such compliance dates, whichever first occurs. The Administrator shall not establish a single compliance date under this paragraph unless the applicant demonstrates to the satisfaction of the Administrator that the establishment of a single compliance date will result in compliance by the applicant with all such standards earlier than would be the case in the absence of such single date.*

*(B) In determining whether a single compliance date should be established under this paragraph and in determining what that date should be, the Administrator shall consider, among other things (i)*

*the extent to which the technology which is the basis for one of the applicable pretreatment standards is inconsistent with the technology which is the basis for another of the applicable pretreatment standards, (ii) the extent to which the later pretreatment standards require additional technology, whether or not such technology is inconsistent with the technology which is the basis for one or more of the earlier pretreatment standards, and (iii) the extent to which achieving compliance with the later standards at an earlier date is practicable based on engineering, design, and construction factors.*

* * * * * * *

*(e) In the case of any new or existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 301(k) of this Act, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may establish a date for compliance with the applicable pretreatment standard not later than two years after the date for compliance with such applicable standard (1) if the Administrator determines that (A) the innovative system has the potential for industrywide application, and (B) the action will not cause the publicly owned treatment works to be in violation of its permit under section 402, and (2) if the Administrator (or the State, in any case in which the State has a pretreatment program approved by the Administrator) concurs with the proposed action of the owner or operator of such treatment works under this subsection.*

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### FEDERAL ENFORCEMENT

SEC. 309. (a)(1) * * *

* * * * * * *

[(c)(1) Any person who willfully or negligently violates section 301, 302, 306, 307, or 308 of this Act, or any permit condition or limitation implementing any of such actions in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

[(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

[(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.]

*(c)(1) Any person who—*

*(A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or*

*(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State;*

*shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment of not more than two years, or by both.*

*(2) Any person who—*

*(A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or*

*(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State;*

*shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than two years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or by imprisonment of not more than four years, or by both.*

*(3) It shall be an affirmative defense under paragraphs (1)(B) and (2)(B) of this subsection that the introduction of any pollutant or hazardous substance into a sewer system or a publicly owned treatment works was in compliance with all applicable Federal, State, and local requirements which govern the introduction of a pollutant*

*or hazardous substance into a sewer or publicly owned treatment works.*

*(4) Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both.*

*(5) For the purpose of this subsection, the term "person" means, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.*

*(6) For the purpose of this subsection, the term "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.*

(d) Any person who violates section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator, or by a State, or in a permit issued under section 404 of this Act by a State, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed **[**$10,000**]** *$20,000* per day of such violation.

* * * * * * *

*(g)(1) Whenever on the basis of any information available to him—*

*(A) the Administrator finds that any person is in violation of section 301, 302, 306, 307, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by him or by a State, or*

*(B) the Secretary of the Army, acting through the Chief of Engineers (hereinafter referred to as the "Secretary") finds that any person is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 404 of this Act by a State,*

*he may, after consultation with the State in which the violation occurs, assess a civil penalty of not more than $10,000 per day of* *violation, except that such penalty shall not exceed a total of $75,000.*

*(2)(A) A civil penalty shall be assessed under this subsection by the Administrator or Secretary, as the case may be, by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator or Secretary, as the case may be, shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's or Secretary's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order.*

*(B) In determining the amount of a civil penalty, the Administrator or Secretary, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, economic savings (if any) resulting from the violation, and such other matters as justice may require.*

*(C) The Administrator of Secretary, as the case may be, may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United states to the person charged.*

*(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.*

*(4) If any person fails to pay an assessment of a civil penalty—*

> *(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or*
>
> *(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator or the Secretary, as the case may be,*

*the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.*

*(5) The Administrator or Secretary, as the case may be, shall have the authority to issue subpoenas in connection with hearings under paragraph (2) of this subsection and may request the Attorney General to bring an action to enforce any subpena under this subsection. The district courts shall have jurisdiction to enforce such subpenas and impose sanctions.*

*(6) Action taken by the Administrator or Secretary, as the case may be, pursuant to this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act, except that any violation with respect to which a civil penalty is imposed under this subsection shall not be subject to a civil penalty under section 309(d) or section 311(b) of this Act.*

*(7) When a State has proceeded with an enforcement action relating to a violation with respect to which the Administrator or the Secretary is authorized to assess a civil penalty under this subsection, the Administrator and the Secretary are not authorized to take any action under this subsection if the State demonstrates that the State imposed penalty is appropriate.*

* * * * * * *

### CLEAN LAKES

SEC. 314. (a) Each State shall prepare or establish, and submit to the Administrator for his approval—

(1) an identification and classification according to eutrophic condition of all publicly owned [fresh water] lakes in such State;

(2) procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes; and

(3) methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes.

(b) The Administrator shall provide financial assistance to States in order to carry out methods and procedures approved by him under *subsection (a) of* this section. *The Administrator shall provide financial assistance, to States to prepare the identification and classification surveys required in subsection (a)(1) of this section.*

(c)(1) The amount granted to any State for any fiscal year under *subsection (b) of* this section shall not exceed 70 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under *subsection (a) of* this section.

(2) There is authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1973; $100,000,000 for the fiscal year 1974; *$150,000,000 for the fiscal year 1975, $50,000,000 for fiscal year 1977, $60,000,000 for fiscal year 1978, $60,000,000 for fiscal year 1979, $60,000,000 for fiscal year 1980,* $30,000,000 for fiscal year 1981, [and $30,000,000 for fiscal year 1982] *$30,000,000 for fiscal year 1982, and $30,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, and 1988* for grants to States under *subsection (b) of* this section which such sums shall remain available until expended. The Administrator shall provide for an equitable distribution of such sums to the States with approved methods and procedures under *subsection (a) of* this section.

*(d)(1) The Administrator shall make grants to States for priority projects for control and nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The Administrator shall provide an equitable distribution of such sums to the States.*

*(2) The amount granted to a State for a project under this subsection shall not exceed 70 per centum of the cost of such project.*

*(3) There is authorized to be appropriated to carry out this subsection not to exceed $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, And September 30, 1989. Sums appropriated shall remain available until expended.*

*(e)(1) Any State may prepare, and submit to the Administrator for his approval—*

*(A) a survey of water quality deterioration in lakes and other waters in such State which has resulted from high acidity which may be due to acid deposition, and*

*(B) methods and procedures which may be applied to lakes and other waters in such State to restore water quality, insofar as such quality has deteriorated as a result of high acidity which may be due to acid deposition.*

*(2)(A) The Administrator shall make grants to States to carry out methods and procedures approved by the Administrator under this subsection. Such methods may include, but are not limited to, (i) innovative methods of neutralizing and restoring buffering capacity of lakes and other waters that have become so acidic as to endanger game fish species, and (ii) methods of removing from lakes and other bodies of water toxic metals and other toxic substances mobilized by high acidity.*

*(B) The amount granted under this section to any State for any fiscal year shall not exceed 80 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under this subsection.*

*(C) The Administrator shall provide for an equitable distribution of sums appropriated under this subsection among States with approved methods and procedures. Such distribution shall be based on the relative need of each such State for the restoration of water quality which has deteriorated as a result of high acidity which may be due to acid deposition. The amount of any grant to a State under this subsection shall be in addition to, and not in lieu of, any other Federal financial assistance.*

*(3) There is authorized to be appropriated to carry out this subsection $25,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989. Amounts appropriated under this subsection shall remain available until expended.*

*(f) The Administrator shall submit annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status and trend of water quality in lakes in the United States, including but not limit to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.*

*(g) The Administrator shall, in cooperation with the State of Texas, study water quality problems in Lake Houston, Houston, Texas, and undertake such control measures as the Administrator and State determine are necessary to improve water quality. Such study shall include, but not be limited to, the evaluation of the feasibility of regional or consolidated waste treatment facilities and the development of recommendations for the cost-effective control of*

*pollutants entering the Lake Houston watershed. The Administrator shall submit a report of such study and identify such structural or nonstructural controls which were undertaken or are proposed, along with recommendations for further measures, to improve the water quality of Lake Houston, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than two years after the date of enactment of this subsection. There is authorized to be appropriated for fiscal years beginning after September 30, 1984, $10,000,000 to carry out this subsection, to remain available until expended.*

*(h) The Administrator, in cooperation with the Secretary of the Army, acting through the Chief of Engineers, and in consultation with appropriate State and local agencies, shall conduct a one-year comprehensive study of the Beaver Lake, Arkansas, to identify measures which will optimize achievement of the purposes for which Beaver Dam was constructed while preserving and enhancing the quality of the reservoir's water. Upon completion of the study the Administrator shall undertake a demonstration project at Beaver Lake to determine the effectiveness of measures identified in such study for preserving and enhancing the quality of the reservoir's water for current and future users. Upon completion of the demonstration project the Administrator shall submit a report of such study and project, along with recommendations for further measures to improve the water quality of Beaver Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. Funds appropriated under subsections (c), (d), and (e) of this section shall be available to carry out this subsection.*

*(i) The Administrator shall undertake a demonstration project for the removal of silt, stumps, and other obstructions from Greenwood Lake and Belcher Creek, New Jersey. Upon completion of the demonstration project the Administrator shall submit a report of such project, along with recommendations for further measures to improve the water quality of Greenwood Lake and Belcher Creek, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. There is authorized to be appropriated $10,000,000 to carry out this subsection.*

*(j) The Administrator shall undertake a demonstration project for the removal of silt and stumps from, and the control of pollution from nonpoint sources in, Deal Lake, Monmouth County, New Jersey. Upon completion of the demonstration project, the Administrator shall submit a report of such project, along with recommendations for further measures to improve the water quality of Deal Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. There is authorized to be appropriated $8,000,000 to carry out this subsection.*

*(k) The Administrator shall undertake a demonstration project for the restoration of Alcyon Lake, New Jersey, including removal and disposal of contaminated sediments in the lake. Upon completion of the demonstration project, the Administrator shall submit a report of such project, along with recommendations for further*

*measures to improve the water quality of Alcyon Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. There is authorized to be appropriated $3,500,000 to carry out this subsection.*

* * * * * * *

### *NONPOINT SOURCE CONTROL IMPLEMENTATION PROGRAMS*

*SEC. 319. (a)(1) The Governor of each State shall prepare and submit to the Administrator for his approval, a report which—*

*(A) identifies those portions of the navigable waters within the State which, as a result (in whole or in part) of pollution from nonpoint sources, are not meeting applicable water quality standards or the goals and requirements of this Act;*

*(B) identifies those categories and subcategories of nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;*

*(C) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsection (1); and*

*(D) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category or subcategory.*

*(2) Each report submitted under paragraph (1) shall be based on available information including, but not limited to, information available under sections 208, 303(e), 304(f), and 305(b) of this Act, and may include all or part of any water quality management program approved under section 208 or 303 of this Act.*

*(b)(1) The Governor of each State shall prepare and submit to the Administrator for his approval—*

*(A) a plan which such State proposes to implement in the first four fiscal years beginning after the date of submission of such plan for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters; and*

*(B) a report which (i) identifies each department, agency, or instrumentality of the United States and each department, agency, or instrumentality of the State which is likely to be engaging in, supporting, or providing financial assistance in each of such fiscal years for any activity or program in the State which, if carried out, would be inconsistent with implementation of such plan in such fiscal years, and (ii) recommends to the Administrator methods by which such Federal department, agency, or instrumentality could modify administration of such activity or program, and describes methods by which such State department, agency, or instrumentality intends to modify ad-*

*ministration of such activity or program, so that such activity or program is consistent with, and assists the State in implementation of, such plan.*

*(2) Each plan proposed for implementation under this subsection shall specify—*

*(A) from among those portions of navigable waters significantly affected by pollution added from nonpoint sources, each portion and land area contributing such pollution with respect to which the State plans to assist, encourage, or require implementation of best management practices and measures in the first four fiscal years beginning after the date of submission of such plan;*

*(B) the order in which, and the schedule under which, the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years;*

*(C) from among those categories and subcategories of nonpoint sources of pollution which contribute to each portion specified under subparagraph (A) not meeting applicable water quality standards or the goals and requirements of this Act, the categories and subcategories with respect to which the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years and the relative contribution of such pollution by category and subcategory of such sources;*

*(D) the best management practices and measures the implementation of which the State plans to assist, encourage, or require in each of such fiscal years to reduce pollution resulting from nonpoint sources and to improve water quality;*

*(E) the methods, by category and subcategory of such sources of pollution, (including, but not limited to, demonstration, enforcement, technical assistance, education, training, and cost-sharing programs) which the State plans to use to encourage, assist, or require implementation of such practices and measures in such fiscal years; and*

*(F) sources of Federal and other assistance (other than assistance provided under subsection (i)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.*

*(3) Each plan submitted by a State under this subsection shall be accompanied by a certification of the attorney general of the State or the chief attorney of any State water pollution control agency which has independent legal counsel that the laws of the State provide adequate authority to implement such plan or, if there is not such adequate authority, a list of such additional authority which will be necessary to implement such plan.*

*(4) The schedule required by paragraph (2)(B) shall establish for each category and subcategory of nonpoint sources of pollution specified under paragraph (2)(C) an expeditious time period for implementation of best mangement practices and measures specified under paragraph (2)(D) and shall indicate the estimated dates for implementation of such practices and measures.*

*(5) In developing and implementing a plan under this subsection, a State shall, to the maximum extent practicable, utilize local*

*public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.*

*(6) A State shall, to the maximum extent practicable, develop and implement a plan under this subsection on a watershed-by-watershed basis.*

*(c)(1) Any report required by subsection (a) and any plan and report required by subsection (b) shall be submitted to the Administrator during the 270-day period beginning on the date of enactment of this section; except that upon request of the Governor, the Administrator shall extend such period for not to exceed an additional 270 days.*

*(2) If a Governor of a State does not submit the report required by subsection (a) during such period, the Administrator shall prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a).*

*(d) The Administrator shall consolidate recommendations for modifications of activities and programs submitted by the States under subsection (b)(1)(B) and submit such consolidated recommendations to the appropriate departments, agencies, and instrumentalities of the United States. Each such department, agency, or instrumentality, to the maximum extent practicable and consistent with existing law, shall accommodate such recommendations and shall carry out its own activities and programs in a manner which is consistent with, and will assist implementation of, the plan submitted by the State under subsection (b) and approved by the Administrator under this section.*

*(e)(1) Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or plan under this section (other than subsections (i) and (j)), the Administrator shall either approve or disapprove such report or plan, as the case may be. The Administrator may approve a portion of a plan under this subsection. If the Administrator does not disapprove a report, plan, or portion of a plan in such 180-day period, such report, plan, or portion shall be deemed approved for purposes of this section.*

*(2) If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that a plan submitted under subsection (b) or any portion thereof is not likely to satisfy, in whole or in part, the goals and requirements of this Act, that adequate authority does not exist, or adequate resources are not availabale, to implement such plan or portion, that the schedule for implementing such plan or portion is not sufficiently expeditious, or that the practices and measures proposed in such plan or portion are not adequate to improve the quality of navigable waters in the State and to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources, the Administrator shall disapprove the plan or portion thereof with respect to which the Administrator makes such detrmination. The Administrator shall notify the State of such disapproval and request specific revisions of such plan or portion necessary to obtain approval of such plan or portion. Not later than 90 days after the date of such notification, the State shall submit to the Administrator for his approval under this subsection its revisions of such plan or portion.*

*(f) If a State fails to submit a plan under subsection (b) or the administrator does not approve such a plan, a local public agency or organization which has expertise in, and authority to, control pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a plan which is described in subsection (b) and meets the requirements of subsection (e). After development of such plan, such agency or organization shall submit such plan to the Administrator for his approval. If the Administrator approves such plan, such agency or organization shall be eligible to receive financial assistance under subsection (i) for implementation of such plan as if such agency or organization were a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (i).*

*(g) Upon request of a State, the Administrator may provide technical assistance to such State in developing a plan under subsection (b) for those portions of the navigable waters requested by such State.*

*(h)(1) If any portion of the navigable waters in any State which is implementing a plan approved under this section is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute pollution resulting from nonpoint sources to such portion. If, on the basis of information available to him, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the quality of such portion.*

*(2) Each State which contributes significant pollution from nonpoint sources to the portion of navigable waters in amounts which contribute to such portion not meeting applicable water quality standards or the goals and requirements of this Act shall submit to the Administrator for his approval a plan referred to in subsection (b) to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion; except that if such State has an approved plan under subsection (b), such State shall revise such plan to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion and submit such revised plan to the Administrator for his approval under this sec-*

*tion. Such plan or revised plan shall be consistent with existing Federal and State law. After approval, the State shall implement such plan or revised plan.*

*(i)(1) Upon application of a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting the State in implementing such plan.*

*(2) An application for a grant under this subsection in any fiscal year shall be in such form and shall contain—*

*(A) an identification and description of the best management practices and measures which the State proposed to assist, encourage, or require in such year with the Federal assistance to be provided under the grant; and*

*(B) such other information as the Administrator may require.*

*(3)(A) The Federal share of the cost of each plan implemented with Federal assistance under this subsection in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such plan excet that the Federal share of those costs of any such plan which are attributable to a watershed area with respect to which the Administrator determines that a significant number of non-Federal, non-State interests of such area are willing and able to enter into agreements to participate in such year in nonpoint source pollution control measures under such plan shall be not less than 50 percent and not more than 60 percent.*

*(B) For purposes of this paragraph, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.*

*(4) No grant may be made to a State under this subsectin in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.*

*(5)(A) Each State which receives a grant under this subsection in any fiscal year shall submit to the Administrator a written report which describes the activities and programs carried out in the State under such grant and the progress made by such State in meeting the schedule specified under subsection (b)(2)(B).*

*(B) No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2)(B).*

*(6) Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this*

*subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.*

*(7) For each fiscal year beginning after September 30, 1986, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to any State which has included effective regulatory mechanisms in an approved State plan under this section and has implemented such mechanisms in the preceding fiscal year. Such mechanisms shall include, but are not limited to, deadlines for implementation of best management practices and enforcement procedures to ensure implementation of such plan.*

*(8) There is authorized to be appropriated to carry out this subsection not to exceed $150,000,000 per fiscal year for the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989. Sums appropriated to carry out this subsection shall remain available until expended.*

*(j)(1) Not later than January 1, 1985, and each January 1 thereafter the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.*

*(2) Not later than January 1, 1988, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum shall include—*

*(A) an analysis of the effectiveness of plans carried out under this section and of the best management practices and measures utilized under those plans in controlling nonpoint sources of pollution;*

*(B) an analysis of the level of State participation in implementing such plans; and*

*(C) recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources.*

*(k) Not less than 5 percent of the funds appropriated to carry out subsection (i) for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.*

## TITLE IV—PERMITS AND LICENSES

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### NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

SEC. 402. (a)(1) * * *

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(b) At any time after the promulgation of the guidelines reuired by subsection (h)(2) of section 304 of this Act, the governor of each States desiring to administer its own permit program for discharges into navigable waters within its jurisdication may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any aplicable requirements of section 301, 302, 306, 307, and 403;

[(B) are for fixed terms not exceeding five years; and]

*(B) are for fixed terms not exceeding ten years, except in the case of a permit which modifies any requirement of this Act under section 301(c), (g), (h), or (m) of this Act and except in any case in which the State determines that the applicant has not consistently complied with any permit held by such applicant under this section, in which cases such permits shall be issued for fixed terms not exceeding five years;*

* * * * * * *

*(D) must be modified promptly to insure compliance with any new or revised effluent limitation under section 307(a) of this Act which is more stringent than an effluent limitation in the permit or which controls a pollutant not controlled in the permit; and*

[(D)] *(E)* control the disposal of pollutants into wells;

* * * * * * *

(c)(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those [navigable waters] *discharges* subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 304(*i*)(2) of this Act. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

* * * * * * *

*(4) A State may return administration of its permit program to the Administrator, and the Administrator may withdraw approval of a State permit program under paragraph (3) of this subsection (A) in the case of any approval under subsection (n)(3), the entire permit program being administered by the State department or agency at the time of such return or withdrawal, as the case may be, or (B) in the case of any approval under subsection (n)(4), any phased compo-*

*nent approved at the time of such return or withdrawal, as the case may be.*

* * * * * * *

(l)*(1)* The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

*(2) The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require such a permit for discharges of stormwater runoff from mining operations or oil or gas exploration, production, processing, or treatment operations, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated with process wastes, overburden, raw materials, toxic pollutants above natural background levels, spilled product, hazardous substances in excess of reportable quantities as determined by the Administrator, or oil or grease.*

*(m) To the extent a treatment works (as defined in section 212 of this Act) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a discharger of conventional pollutants identified pursuant to section 304(a)(4) of this Act which are introduced into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.*

*(n)(1) The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.*

*(2) A partial permit program under this subsection shall cover at a minimum administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).*

*(3) The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if—*

*(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and*

*(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b).*

*(4) The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if—*

*(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b); and*

*(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than five years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.*

* * * * * * *

## TITLE V—GENERAL PROVISIONS

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### GENERAL DEFINITIONS

SEC. 502. Except as otherwise specifically provided, when used in this Act:

(1) * * *

* * * * * * *

(14) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include *agriculture stormwater discharge and* return flows from irrigated agriculture.

### ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 509. (a)(1) * * *

* * * * * * *

(b)(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 306, (B) in making any determination pursuant to section 306(b)(1)(C), (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 307. (D) in making any determination as to a State permit program submitted under section 402(b), (E) in approving or promulgating any effluent limitation or other limitation under sections 301, 302, or 306 [and] (F) in issuing or denying any permit under section 402 *in promulgating any individual control strategy under section 304(1),* may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such ninetieth day.

* * * * * * *

### REPORTS TO CONGRESS

SEC. 516. (a) * * *

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*(f) The Administrator, in cooperation with interested States and Federal agencies, shall study and monitor the effects on the quality of navigable waters attributable to the impoundment and discharge of water by dams. The results of such study, together with any recommendations for the control of such impoundment and discharge, shall be submitted to Congress not later than December 31, 1985.*

### GENERAL AUTHORIZATION

SEC. 517. There are authorized to be appropriated to carry out this Act, other than sections 104, 105, 106(a), 107, 108, 112, 113, 114, 115, 206, 207, 208 (f) and (h), 209, 304, 311 (c), (d), (i), (l), and (k), 314, 315, and 317, $250,000,000 for the fiscal year ending June 30, 1973, $300,000,000 for the fiscal year ending June 30, 1974, $350,000,000 for the fiscal year ending June 30, 1975, $100,000,000 for the fiscal year ending September 30, 1977, $150,000,000 for the fiscal year ending September 30, 1978, $150,000,000 for the fiscal year ending September 30, 1979, $150,000,000 for the fiscal year ending September 30, 1980, $150,000,000 for the fiscal year ending September 30, 1981, [and $161,000,000 for the fiscal year ending September 30, 1982.] *$161,000,000 for the fiscal year ending September 30, 1982, and $160,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988.*

* * * * * * *

# ADDITIONAL VIEWS OF CONGRESSMAN ARLAN STANGELAND

I want to congratulate the Members of the Committee for fashioning legislation that is a significant step forward in achieving needed Clean Water Act amendments this Congress. The leadership of Subcommittee Chairman Bob Roe and, for course, Committee Chairman Jim Howard and Ranking Member Gene Snyder, has been particularly important. Many key issues were resolved and a balance of interests has, for the most part, been maintained that will permit continued progress toward the clean water goals we all desire and which the American people deserve.

Any legislation can, of course, be improved, and I expect some changes prior to final enactment of H.R. 3282.

An important issue of local control and effective wastewater treatment programs was not included in the bill as voted out of the Committee on Public Works and Transportation. Industries that discharge into publicly owned treatment works (POTWs) instead of directly into water bodies are required to "pretreat" their discharges. The program now in the Act focuses on national categorical standards, a uniform system that, despite many problems EPA has had developing it, will be valuable in most communities across the United States.

There are, however, numerous examples of cities which have had outstanding programs in place for years. Some of these communities have personnel, funding, and technical facilities that have resulted in exemplary systems. To force these programs into a national system just for "consistency" may be counterproductive to the goal of achieving effective water pollution control.

The purpose of the pretreatment program is to prevent industrial pollutants from interfering with operation of POTWs and to assure no pass-through of toxic pollutants. The diversity of design and operation of POTWs makes an inflexible, uniform system most difficult to adapt to every situation. In addition, POTWs have been shown to treat a wide variety of pollutants from many sources more effectively than had been expected. Flexibility, within a stringent series of guidelines, is therefore needed where local programs can meet the water quality and discharge standards and requirements that have been set.

I gave serious consideration to offering an amendment in Subcommittee and Full Committee to authorize a local option pretreatment program. Further review and refinement seemed warranted and I plan to continue to pursue the possibility as the legislation moves forward. During Committee markup of H.R. 3282, assurance was given that rights to bring such an issue up on the Floor would be preserved despite the fact that an amendment was not offered during Subcommittee or Full Committee markup.

ARLAN STANGELAND.

# ADDITIONAL VIEWS OF REPRESENTATIVE BOB EDGAR ON H.R. 3282

This bill represents the product of literally years of hearings and consideration by the Committee on Public Works and Transportation. As a matter of policy, authorizing legislation to extend the Clear Water Act provides essential continuity and is a reiteration of the commitment of Congress to clean up the nation's waters. As we reach the mid-1980's—the time envisioned by the original 1972 Act when most of our water pollution control goals should be achieved—we should reflect and adjust programs in line with the experience we have gained with pollution control programs. Our main pursuit, though, should still be finding ways to achieve and preserve the ultimate goal of fishable, swimable, pollution-free water adopted under the 1972 Act.

I was a cosponsor of the original HR 3282 and continue to believe that the bill as amended by the committee makes a number of contributions toward cleaning up our waters. Among the most positive aspects of the bill are an important new grant program to encourage states to clean up nonpoint pollution from runoff, new programs to clean up lakes and estuaries such as the Chesapeake Bay, and increases in funding for grants and loans for municipal wastewater treatment.

I was disappointed that some of the most forceful environmental provisions of the introduced version of HR 3282, such as the codification of strong water quality standards, were stripped from the bill during full committee consideration. I was further disappointed at some of the additions to the legislation made during committee proceedings which have the effect of delaying enforcement of, or even weakening, existing law. Among the most problematic of these provisions are a liberal extension—from five to ten years—of discharge permits issued under the national program to control industrial pollution; an extension of the deadline for the electroplating industry, which discharges over 50 million tons of toxic chemicals and metals each year, to comply with duly issued standards for pollution treatment; and a loophole which allows mining companies to reopen abandoned mines and ignore the stringent pollution control measures normally required at such mines. I am also discouraged that the committee saw fit to grant variences of normal pollution control requirements for two pulp mills in Alaska, contrary to the decisions of the EPA.

Granting waivers, delays, and variances for specific industries or firms can only encourage those who might see some short-term benefit in more substantial weakening of the critical provisions of the Clean Water Act. Congress knew that the goals of the Act would be difficult and expensive to achieve when the Act first passed, but Congress also realized that the long-term consequences of poisoning the environment and destroying our natural resources are even more costly. By and large, progress has been made in cleaning up pollution. Citizens, industry and government at all levels have made important efforts to accustom themselves to the far-sighted requirements of care for the environment. Yet, it will be difficult to sustain this progress if Congress is going to be seen as backing down from some of the most difficult tasks or as granting inequitable relief from regulations.

We all realize that sometimes unrealistic deadlines may be set into legislation or that new techniques or technologies may arise which should prompt us to change some of the rules. The original HR 3282 took this into account by extending deadlines under the best available and best conventional technology requirements of the Act. I believe, though, that once realistic (even though difficult) dealines are set and appropriate technology is found, we should get on with the job proposed by the Clean Water Act—cleaning up pollution.

I know every member of the committee shares the goal of controlling pollution. I believe this legislation takes some important further steps toward that goal. I only hope that, through the further legislative process, we can yet examine those provisions which may in fact undermine some of the goals we all share.

Bob Edgar.

## ADDITIONAL VIEWS OF CONGRESSWOMAN NANCY L. JOHNSON CONCERNING H.R. 3282

Although I cosponsored Chairman Howard's original version of H.R. 3282 and supported the subcommittee's substitute language and en bloc amendments, I wish to make very clear my serious concern for the extensions provided for electroplaters in section 31 of the reported bill.

While I can appreciate the uncertainty surrounding the promulgation of the electroplating pretreatment standards, these standards first were issued by the Environmental Protection Agency in 1979, fully five years ago. Many electroplating companies have taken the time and spent the money necessary to comply with these rules yet, under the provisions of H.R. 3282, will be forced to wait still longer for their noncomplying counterparts to "catch up."

The disparity in compliance efforts nationwide may be seen most readily in the State of Connecticut, whose Sixth District I proudly represent, and whose electroplaters and metal finishers are overwhelmingly in compliance with stringent pretreatment standards. Many of my constituent companies have complained that, because of lax enforcement, bureaucratic intransigence, or outright flaunting of federal law, their counterparts in nearby states have not moved to comply with the standards and consequently have been able to underbid them by as much as fifteen percent. Obviously, much of this price differential may be attributed to the extra costs incurred by my constituents who must meet these stringent standards.

In light of warnings from the National Association of Metal Finishers to its members fully a year ago that they comply with the pretreatment standards, I believe that electroplaters nationwise should move to comply promptly. The December, 1984, deadline is a fair compromise but the six-month extension possible under the bill is ripe for abuse. I am certain that other members of the Committee share my interest in seeing that such abuses do not occur and that only those companies with a serious, documented problem with coming into compliance by the end of this year be granted the additional six months permitted under the bill. I strongly urge the Environmental Protection Agency to take heed of Chairman Roe's remarks on this subject at the Committee markup, to wit: "I would hope that EPA would take the direction the Committee has given it and move with the greatest of dispatch. . . . that what's in this legislation the Committee means." Mr. Edgar also expressed serious concern with this deadline extension and I trust that those interested in abiding by the Committee's intent look to his colloquy with Chairman Roe as well.

I commend Chairman Howard, Chairman Roe, and Ranking Members Snyder and Stangeland for moving this important environmental legislation through the Committee this year and look forward to seeing substantial compliance with the standards set forth in this bill. As I pointed out at the Committee markup, I will work for significantly increased penalties on noncomplying companies if good faith efforts are not made to abide by the laws of the land.

NANCY L. JOHNSON.

## ADDITIONAL VIEWS OF REPRESENTATIVE E. CLAY SHAW TO H.R. 3282

I am concerned about the deletion of Section 404 strengthening language in H.R. 3282. I am from a state where public concern over the erosion of wetlands is at an all-time high. There is good reason for this concern. Florida has lost over half its original wetlands since 1850, from 20.3 million acres to only 8 million, a 60 percent loss. Between 1900 and 1973, 40 percent of the wetlands in South Florida were lost.

This massive loss and premature draining of wetlands has clearly had an adverse effect in Florida. Studies show that drained agricultural areas in Florida were five degrees colder in the winter than undrained areas. Wetlands drainage in South Florida has contributed to flooding, drought, saltwater intrusion, reduction of fish and wildlife resources and water quality problems.

Despite new awareness of the importance of wetlands and the dire consequences which result when wetlands erode, the loss continues. In Florida's Palm Beach County alone, between the years 1973 and 1980, 24,422 acres of wetlands were lost.

Statistics such as these lead me to believe that this invaluable resource is not being adequately protected. The basic problem seems to be one of interpretation. Who has the basic responsibility for protecting wetlands? The Army Crops of Engineers? The Environmental Protection Agency? The states? There seems to be a lack of agreement on this crucial issue. All will agree, however, that under existing federal law we are continuing to lose wetlands. Something must be done. Whether increased federal or state involvement is the answer, I don't know at this time. It is my hope, however, that we will be revisiting this issue soon. Our current programs governing wetlands are inadequate and this is a problem that urgently needs to be addressed before more acres of this precious resource are lost forever.

E. Clay Shaw, Jr.

## SUPPLEMENTAL VIEWS OF HON. LYNN MARTIN

It is my sincere hope that as Clean Water Act reauthorization legislation is further developed, every consideration will be given to amending the Act to allow for some degree of alternative local pretreatment systems in lieu of the Federal pretreatment program. The adoption of such a measure would provide the most progressive Publicly Owned Treatment Works (POTWs) with an opportunity to demonstrate that a local program can meet or even exceed control levels equivalent to Federal Categorical Standards.

Many good-faith POTWs have demonstrated their commitment to controlling industrial discharges to sewer systems for many years. These same programs have imposed controls on industrial facilities to adequately protect the treatment works and the waters which receive the effluent. In addition, these communities have developed responsible sludge management programs that are coordinated with their pretreatment activities. For those locally based programs which have already met or exceeded the intended Federal goals, it is inappropriate to subject them to excessive and duplicative controls. Of course, in those cases where local governments have not implemented effective pretreatment programs on their own accord, then imposition of the Federal pretreatment model is certainly warranted.

In those communities, including my own City of Rockford, which have already made substantial investment in developing responsible and effective local programs, it is extremely difficult to justify the expenditure of large sums for control equipment which will only "treat for treatment's sake." In most localities, this money could be better spent by business for product development, productivity improvement, or an expanded workforce.

While I support efforts aimed at adopting some form of alternative local pretreatment program, I must emphasize that any program which may be adopted must be formulated upon stringent qualifying guidelines. No alternative program is worth jeopardizing our past, present, or future progress toward developing a national pretreatment control program which ensures adequate protection of POTW operations and the environment.

In order to safeguard against any potential abuses by local programs, very tight constraints may be implemented to effectively limit this opportunity to qualified, existing local programs which will continue stringent monitoring of toxicity levels to verify protection of water quality. In addition, local programs must be closely monitored to verify adequacy of protection before consideration of inclusion of new industrial dischargers under the alternative program.

In addressing the pretreatment issue, I believe we have a responsibility to follow a course which is directed not only by good sense, but also by good government. I am hopeful that as debate continues on this matter, a reasonable approach can be developed which would enable many communities to more fully utilize their existing resources without sacrificing environmental goals.

LYNN MARTIN.

# Union Calendar No. 480

98th CONGRESS
2d Session

# H. R. 3282

**[Report No. 98–827]**

To amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

June 13, 1983

Mr. Howard introduced the following bill; which was referred to the Committee on Public Works and Transportation

September 14, 1983

Additional sponsors: Mr. Udall, Mr. Oberstar, Mr. Jeffords, Mrs. Schneider, Mr. Towns, Mr. Lantos, Mr. Bonior of Michigan, Mr. Guarini, Mr. Ottinger, Mr. Rodino, Mr. Markey, Mr. Fauntroy, Mr. Tallon, Mr. Frank, Mr. Sunia, Mr. Mitchell, Ms. Mikulski, Mr. Seiberling, Mr. Florio, Mr. Evans of Illinois, Mr. D'Amours, Mr. Crockett, Mr. Clay, Mr. Conyers, Mr. Vento, Mr. Ratchford, Mr. Barnes, Mr. Coughlin, Mr. Stokes, Mr. Dixon, Ms. Kaptur, Mr. Weiss, Mr. Jones of Oklahoma, Mr. Eckart, Mr. de Lugo, Mr. Lehman of Florida, Mr. Scheuer, Mr. Minish, Mr. Beilenson, Mr. Morrison of Connecticut, Mr. Gejdenson, Mr. Donnelly, Mr. Long of Maryland, Mr. Fazio, Mr. Forsythe, Mr. Torricelli, Mr. Carper, and Mr. Yates

February 2, 1984

Additional sponsors: Mr. Fish, Mr. Lowry of Washington, Mr. Hughes, Mr. Levine of California, Mrs. Schroeder, Mr. Dellums, Mrs. Boxer, Mr. Weaver, Mr. McDade, Mr. Edgar, Mrs. Burton of California, Mr. Neal, Mr. Bates, Mr. Kolter, Mr. Mrazek, Mr. Wheat, Mr. Hoyer, Mrs. Kennelly, Mr. Bosco, Mr. Weber, Mr. Shannon, Mr. Clarke, Mr. Kostmayer, Mr. Mavroules, Mr. Moakley, Mr. Smith of New Jersey, Mr. Berman, Mr. Harkin, Mr. Wyden, Mr. Owens, Mr. Sabo, Mr. Heftel of Hawaii, Mr. Borski, Mr. Kildee, Mr. Matsui, Mr. Edwards of California, Mr. Stark, Mr. Brown of California, Mrs. Hall of Indiana, Mr. Waxman, Mr. Patterson, Mr. Conte, Mr. Studds, Mr. McKinney, Mr. Mineta, Mrs. Collins, Mr. Carr, Mr. Penny, Mr. Kastenmeier, Mr. Fascell, Mr. Hamilton, and Mr. McCloskey

June 6, 1984

Additional sponsors: Mr. Moody, Mr. Savage, Mr. Molinari, Mr. Harrison, Mr. Annunzio, Mr. Leland, Mr. Courter, Ms. Ferraro, Mr. Rinaldo, Mr. Wolpe, Mrs. Johnson, Mr. Hawkins, Mr. Martinez, Mr. Dowdy of Mississippi, Mr. MacKay, Mr. Dwyer of New Jersey, Mr. Foglietta, Mr. Gonzalez, Mr. Mica, Mr. Spratt, Mr. McKernan, Mr. Rangel, Mr. Feighan, Mr. Olin, Mr. Boehlert, Mrs. Roukema, Mr. Dymally, Mr. Gregg, Mr. Roybal, Mr. Boucher, Mr. Snyder, Mr. Hammerschmidt, Mr. Shuster, Mr. Stangeland, Mr. Clinger, Mr. Shaw, Mr. McEwen, Mr. Daub, Mr. Robert F. Smith, Mr. Packard, Mr. Anderson, Mr. Roe, and Mr. Aspin

Deletion of sponsors: Mrs. Boxer and Mr. Schumer (May 22, 1984), Mr. Annunzio (June 5, 1984), Mrs. Schneider (June 6, 1984)

June 6, 1984

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill introduced on June 13, 1983]

# A BILL

To amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## *SHORT TITLE*

*Section 1. This Act may be cited as the "Water Quality Renewal Act of 1984".*

### *AUTHORIZATIONS OF APPROPRIATIONS*

*SEC. 2. (a) Section 104(u) of the Federal Water Pollution Control Act is amended—*

*(1) in clause (1), by inserting after "September 30, 1982," the following: "and not to exceed $22,770,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,";*

*(2) in clause (2), by striking out "and $3,000,000 for fiscal year 1982" and inserting in lieu thereof the following: "$3,000,000 for fiscal year 1982, and $3,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988"; and*

*(3) in clause (3), by striking out "and $1,500,000 for fiscal year 1982," and inserting in lieu thereof the following: "$1,500,000 for fiscal year 1982, and $1,500,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".*

*(b) Section 106(a)(2) of the Federal Water Pollution Control Act is amended by inserting after "1982" a comma*

*and the following: "and $75,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, and 1988".*

*(c) Section 112(c) of the Federal Water Pollution Control Act is amended by striking out "and $7,000,000 for the fiscal year ending September 30, 1982," and inserting in lieu thereof the following: "$7,000,000 for the fiscal year ending September 30, 1982, and $7,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,".*

*(d) Section 208(f)(3) of the Federal Water Pollution Control Act is amended by striking out "and September 30, 1982" and inserting in lieu thereof "September 30, 1982, September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".*

*(e) Section 208(j)(9) of the Federal Water Pollution Control Act is amended by inserting after "1982," the following: "and $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,".*

*(f) Section 304(k)(3) of the Federal Water Pollution Control Act is amended by striking out "1983" and inserting in lieu thereof "1988".*

*(g) Section 314(c)(2) of the Federal Water Pollution Control Act is amended by striking out "and $30,000,000 for fiscal year 1982" and inserting in lieu thereof the following: "$30,000,000 for fiscal year 1982, and $30,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, and 1988".*

*(h) Section 517 of the Federal Water Pollution Control Act is amended by striking out "and $161,000,000 for the fiscal year ending September 30, 1982" and inserting in lieu thereof "$161,000,000 for the fiscal year ending September 30, 1982, and $160,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".*

### *AUTHORIZATIONS FOR CONSTRUCTION GRANTS*

*SEC. 3. Section 207 of the Federal Water Pollution Control Act is amended by striking out "and for the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, and September 30, 1985, not to exceed $2,400,000,000 per fiscal year" and inserting in lieu thereof "for the fiscal years ending September 30, 1982, and September 30, 1983, not to exceed $2,400,000,000 per fiscal year; for the fiscal year ending September 30, 1984, not to* *exceed $2,400,000,000; for the fiscal year ending September 30, 1985, not to exceed $2,900,000,000; and for the fiscal years ending September 30, 1986, September 30, 1987, and September 30, 1988, not to exceed $3,400,000,000 per fiscal year".*

### *COMPLIANCE DEADLINES*

*SEC. 4. (a) Section 301(b)(2)(C) of the Federal Water Pollution Control Act is amended to read as follows:*

*"(C) for all toxic pollutants referred to in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established;".*

*(b) Section 301(b)(2)(D) of the Federal Water Pollution Control Act is amended by striking out "not later than three years after the date such limitations are established" and inserting in lieu thereof "as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established".*

*(c) Section 301(b)(2)(E) of the Federal Water Pollution Control Act is amended by striking out "1984" and inserting in lieu thereof "1987".*

*(d) Section 301(b)(2)(F) of the Federal Water Pollution Control Act is amended to read as follows:*

*"(F) for all pollutants (other than those subject to subparagraph (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established.".*

*(e) The Administrator of the Environmental Protection Agency shall promulgate final regulations establishing effluent limitations in accordance with sections 301(b)(2)(A) and 307(b)(1) of the Federal Water Pollution Control Act for all toxic pollutants referred to in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives which are discharged from the categories of point sources in accordance with the following table:*

| *Category* | *Date by which the final regulation shall be promulgated* |
|---|---|
| *Foundries* | *June 30, 1984.* |
| *Inorganic chemicals (phase II)* | *June 30, 1984.* |
| *Nonferrous metals forming* | *October 31, 1984.* |
| *Organic chemicals and plastics and synthetic fibers* | *February 28, 1985.* |
| *Pesticides* | *November 30, 1984.* |
| *Plastics molding and forming* | *September 30, 1984.* |
| *Nonferrous metals (phase II)* | *November 30, 1984.* |

### *INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS*

*SEC. 5. (a) Section 304 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:*

*"(l)(1) Not later than one year after the date of enactment of this subsection, the Administrator, in cooperation with the States and after notice and opportunity for public comment, shall publish in the Federal Register a list of all navigable waters in each State for which the Administrator does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a). For each segment of the navigable waters included on such list, the Administrator shall determine the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source. At a minimum, the Administrator shall consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after the date of enactment of this subsection.*

*"(2) Not later than one year after the date of publication of the list required by paragraph (1) of this subsection, the Administrator, in cooperation with the States, shall issue proposed regulations setting forth, for each listed segment of the navigable waters, an individual control strategy. Each individual control strategy shall produce a reduction in the discharge of toxic pollutants from point sources identified by the Administrator under paragraph (1) through the establishment of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy. Not later than 180 days after issuing the proposed regulations, the Administrator shall promulgate each individual control strategy as a final regulation.*

*"(3) The Administrator shall implement each individual control strategy promulgated under paragraph (2) by modifying or requiring the modification of permits under section 402 of this Act.".*

*(b) Section 509(b)(1) of the Federal Water Pollution Control Act is amended by striking out "and (F)" and inserting in lieu thereof "(F)" and by inserting after "any*

*permit under section 402," the following: "and (G) in promulgating any individual control strategy under section 304(l),".*

## *CIVIL PENALTIES*

*SEC. 6. (a) Section 309(d) of the Federal Water Pollution Control Act is amended by striking out "$10,000" and inserting in lieu thereof "$20,000".*

*(b) The Federal Water Pollution Control Act shall not be construed as requiring a State to have a civil penalty for violations described in such section 309(d) which have the same monetary amount as the civil penalty established by such section, as amended by subsection (a) of this section.*

## *STUDY OF EFFECTS OF DAMS ON WATER QUALITY*

*SEC. 7. Section 516 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:*

*"(f) The Administrator, in cooperation with interested States and Federal agencies, shall study and monitor the effects on the quality of navigable waters attributable to the impoundment and discharge of water by dams. The results of such study, together with any recommendations for the control of such impoundment and discharge, shall be submitted to Congress not later than December 31, 1985.".*

### *CONTROL OF NONPOINT SOURCES OF POLLUTION*

*SEC. 8. (a) Title III of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new section:*

### *"NONPOINT SOURCE CONTROL IMPLEMENTATION PROGRAMS*

*"SEC. 319. (a)(1) The Governor of each State shall prepare and submit to the Administrator for his approval, a report which—*

*"(A) identifies those portions of the navigable waters within the State which, as a result (in whole or in part) of pollution from nonpoint sources, are not meeting applicable water quality standards or the goals and requirements of this Act;*

*"(B) identifies those categories and subcategories of nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;*

*"(C) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsection (i); and*

*"(D) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category or subcategory.*

*"(2) Each report submitted under paragraph (1) shall be based on available information including, but not limited to, information available under sections 208, 303(e), 304(f), and 305(b) of this Act, and may include all or part of any water quality management program approved under section 208 or 303 of this Act.*

*"(b)(1) The Governor of each State shall prepare and submit to the Administrator for his approval—*

*"(A) a plan which such State proposes to implement in the first four fiscal years beginning after the date of submission of such plan for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters; and*

*"(B) a report which (i) identifies each department, agency, or instrumentality of the United States and each department, agency, or instrumentality of the State which is likely to be engaging in, supporting, or*

*providing financial assistance in each of such fiscal years for any activity or program in the State which, if carried out, would be inconsistent with implementation of such plan in such fiscal years, and (ii) recommends to the Administrator methods by which such Federal department, agency, or instrumentality could modify administration of such activity or program, and describes methods by which such State department, agency, or instrumentality intends to modify administration of such activity or program, so that such activity or program is consistent with, and assists the State in implementation of, such plan.*

*"(2) Each plan proposed for implementation under this subsection shall specify—*

*"(A) from among those portions of navigable waters significantly affected by pollution added from nonpoint sources, each portion and land area contributing such pollution with respect to which the State plans to assist, encourage, or require implementation of best management practices and measures in the first four fiscal years beginning after the date of submission of such plan;*

*"(B) the order in which, and the schedule under which, the State plans to assist, encourage, or require*

*implementation of such practices and measures in such fiscal years;*

*"(C) from among those categories and subcategories of nonpoint sources of pollution which contribute to each portion specified under subparagraph (A) not meeting applicable water quality standards or the goals and requirements of this Act, the categories and subcategories with respect to which the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years and the relative contribution of such pollution by category and subcategory of such sources;*

*"(D) the best management practices and measures the implementation of which the State plans to assist, encourage, or require in each of such fiscal years to reduce pollution resulting from nonpoint sources and to improve water quality;*

*"(E) the methods, by category and subcategory of such sources of pollution, (including, but not limited to, demonstration, enforcement, technical assistance, education, training, and cost-sharing programs) which the State plans to use to encourage, assist, or require implementation of such practices and measures in such fiscal years; and*

*"(F) sources of Federal and other assistance (other than assistance provided under subsection (i)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.*

*"(3) Each plan submitted by a State under this subsection shall be accompanied by a certification of the attorney general of the State or the chief attorney of any State water pollution control agency which has independent legal counsel that the laws of the State provide adequate authority to implement such plan or, if there is not such adequate authority, a list of such additional authority which will be necessary to implement such plan.*

*"(4) The schedule required by paragraph (2)(B) shall establish for each category and subcategory of nonpoint sources of pollution specified under paragraph (2)(C) an expeditious time period for implementation of best management practices and measures specified under paragraph (2)(D) and shall indicate the estimated dates for implementation of such practices and measures.*

*"(5) In developing and implementing a plan under this subsection, a State shall, to the maximum extent practicable, utilize local public and private agencies and organizations*

*which have expertise in control of nonpoint sources of pollution.*

*"(6) A State shall, to the maximum extent practicable, develop and implement a plan under this subsection on a watershed-by-watershed basis.*

*"(c)(1) Any report required by subsection (a) and any plan and report required by subsection (b) shall be submitted to the Administrator during the 270-day period beginning on the date of enactment of this section; except that upon request of the Governor, the Administrator shall extend such period for not to exceed an additional 270 days.*

*"(2) If a Governor of a State does not submit the report required by subsection (a) during such period, the Administrator shall prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a).*

*"(d) The Administrator shall consolidate recommendations for modifications of activities and programs submitted by the States under subsection (b)(1)(B) and submit such consolidated recommendations to the appropriate departments, agencies, and instrumentalities of the United States. Each such department, agency, or instrumentality, to the maximum extent practicable and consistent with existing law, shall accommodate such recommendations and shall carry out its own activities and programs in a manner which*

*is consistent with, and will assist implementation of, the plan submitted by the State under subsection (b) and approved by the Administrator under this section.*

*"(e)(1) Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or plan under this section (other than subsections (i) and (j)), the Administrator shall either approve or disapprove such report or plan, as the case may be. The Administrator may approve a portion of a plan under this subsection. If the Administrator does not disapprove a report, plan, or portion of a plan in such 180-day period, such report, plan, or portion shall be deemed approved for purposes of this section.*

*"(2) If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that a plan submitted under subsection (b) or any portion thereof is not likely to satisfy, in whole or in part, the goals and requirements of this Act, that adequate authority does not exist, or adequate resources are not available, to implement such plan or portion, that the schedule for implementing such plan or portion is not sufficiently expeditious, or that the practices and measures proposed in such plan or portion are not adequate to improve the quality of navigable waters in the State and to reduce the level of pollution in navigable waters in the State resulting from nonpoint*

*sources, the Administrator shall disapprove the plan or portion thereof with respect to which the Administrator makes such determination. The Administrator shall notify the State of such disapproval and request specific revisions of such plan or portion necessary to obtain approval of such plan or portion. Not later than 90 days after the date of such notification, the State shall submit to the Administrator for his approval under this subsection its revisions of such plan or portion.*

*"(f) If a State fails to submit a plan under subsection (b) or the Administrator does not approve such a plan, a local public agency or organization which has expertise in, and authority to, control pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a plan which is described in subsection (b) and meets the requirements of subsection (e). After development of such plan, such agency or organization shall submit such plan to the Administrator for his approval. If the Administrator approves such plan, such agency or organization shall be eligible to receive financial assistance under subsection (i) for implementation of such plan as if such agency or organization were a State*

*for which a report submitted under subsection (a) and a plan submitted under subsection (b) were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (i).*

*"(g) Upon request of a State, the Administrator may provide technical assistance to such State in developing a plan under subsection (b) for those portions of the navigable waters requested by such State.*

*"(h)(1) If any portion of the navigable waters in any State which is implementing a plan approved under this section is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute pollution resulting from nonpoint sources to such portion. If, on the basis of information available to him, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not*

*the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the quality of such portion.*

*"(2) Each State which contributes significant pollution from nonpoint sources to the portion of navigable waters in amounts which contribute to such portion not meeting applicable water quality standards or the goals and requirements of this Act shall submit to the Administrator for his approval a plan referred to in subsection (b) to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion; except that if such State has an approved plan under subsection (b), such State shall revise such plan to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion and submit such revised plan to the Administrator for his approval under this section. Such plan or revised plan shall be consistent with existing Federal and State law. After approval, the State shall implement such plan or revised plan.*

*"(i)(1) Upon application of a State for which a report submitted under subsection (a) and a plan submitted under subection (b) is approved under this section, the Administra-*

*tor shall make grants under this subsection to such State for the purpose of assisting the State in implementing such plan.*

*"(2) An application for a grant under this subsection in any fiscal year shall be in such form and shall contain—*

*"(A) an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant; and*

*"(B) such other information as the Administrator may require.*

*"(3)(A) The Federal share of the cost of each plan implemented with Federal assistance under this subsection in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such plan; except that the Federal share of those costs of any such plan which are attributable to a watershed area with respect to which the Administrator determines that a significant number of non-Federal, non-State interests of such area are willing and able to enter into agreements to participate in such year in nonpoint source pollution control measures under such plan shall be not less than 50 percent and not more than 60 percent.*

*"(B) For purposes of this paragraph, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and pro-*

*grams carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.*

*"(4) No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.*

*"(5)(A) Each State which receives a grant under this subsection in any fiscal year shall submit to the Administrator a written report which describes the activities and programs carried out in the State under such grant and the progress made by such State in meeting the schedule specified under subsection (b)(2)(B).*

*"(B) No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administra-*

*tor determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2)(B).*

*"(6) Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.*

*"(7) For each fiscal year beginning after September 30, 1986, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to any State which has included effective regulatory mechanisms in an approved State plan under this section and has implemented such mechanisms in the preceding fiscal year. Such mechanisms shall include, but are not limited to, deadlines for implementation of best management practices and enforcement procedures to ensure implementation of such plan.*

*"(8) There is authorized to be appropriated to carry out this subsection not to exceed $150,000,000 per fiscal year for the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989. Sums appropriated to carry out this subsection shall remain available until expended.*

*"(j)(1) Not later than January 1, 1985, and each January 1 thereafter the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.*

*"(2) Not later than January 1, 1988, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall include—*

*"(A) an analysis of the effectiveness of plans carried out under this section and of the best management practices and measures utilized under those plans in controlling nonpoint sources of pollution;*

*"(B) an analysis of the level of State participation in implementing such plans; and*

*"(C) recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources.*

*"(k) Not less than 5 percent of the funds appropriated to carry out subsection (i) for any fiscal year shall be available to the Administrator to maintain personnel levels at the En-*

*vironmental Protection Agency at levels which are adequate to carry out this section in such year.".*

*(b) Section 304(k)(1) of the Federal Water Pollution Control Act is amended by inserting "and 319" after "208".*

### *POLICY FOR CONTROL OF NONPOINT SOURCES OF POLLUTION*

*SEC. 9. Section 101(a) of the Federal Water Pollution Control Act is amended by striking out "and" at the end of paragraph (5), by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and", and by adding at the end thereof the following:*

> *"(7) it is the national policy that plans for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.".*

### *LAKE RESTORATION GUIDANCE MANUAL*

*SEC. 10. Section 104(h) of the Federal Water Pollution Control Act is amended by inserting "(1)" after "(h)" and by adding at the end thereof the following:*

*"(2) The Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of enactment of this paragraph a lake restoration guidance*

*manual establishing procedures to guide future State and local efforts to improve water quality in lakes.".*

*SEC. 11. (a) The second sentence of section 201(g)(1) of the Federal Water Pollution Control Act is amended by striking out "appurtenances, and" and inserting in lieu thereof "appurtenances, new collector sewers and appurtenances," and by striking out the period and inserting in lieu thereof the following: ", and projects to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows.".*

*(b) Section 201(n)(2) of the Federal Water Pollution Control Act is amended by striking out "$200,000,000" and inserting in lieu thereof "$500,000,000". The amendment made by this subsection shall apply to fiscal years beginning after September 30, 1984.*

### *FEDERAL SHARE*

*SEC. 12. (a) Section 202(a)(1) of the Federal Water Pollution Control Act is amended by striking out "55 per centum" and inserting in lieu thereof "65 per centum".*

*(b) The last sentence of section 202(a)(1) of the Federal Water Pollution Control Act is amended—*

*(1) by inserting after "correction" the first place it appears the following: "or a project to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows"; and*

*(2) by inserting after "correction" the third place it appears the following: "and project to address such problems".*

*(c) Section 202(a)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this title has been made to the Administrator before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, such project shall be eligible for grants at 75 per centum of the cost of construction thereof.".*

*(d) The activated bio-filter feature of the project for treatment works of the city of Little Falls, Minnesota, shall be deemed to be an innovative wastewater process and technique for purposes of section 202(a)(2) of the Federal Water Pollution Control Act and the amount of any grant under such Act for such feature shall be 85 per centum of the cost thereof.*

*(e) Section 202(a)(3) of the Federal Water Pollution Control Act is amended by inserting at the end thereof the following: "In addition, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of biodisc equipment (rotating biological contactors) in any publicly owned treatment works if the Adminis-*

*trator finds that such equipment has not met design performance specifications, unless such failure is attributable to negligence on the part of any person, and if such failure has significantly increased capital or operating and maintenance expenditures.".*

### *AGREEMENT ON ELIGIBLE COSTS*

*SEC. 13. Section 203(a) of the Federal Water Pollution Control Act is amended by inserting after the second sentence the following new sentences: "Before taking final action on such plans, specifications, and estimates, the Administrator shall enter into a written agreement with the applicant which establishes and specifies which items of the proposed project are eligible for Federal payments under this section. The Administrator may not refuse to make payments for the Federal share of those costs of any item specified in such an agreement which are incurred on such project.".*

### *GRANT CONDITIONS*

*SEC. 14. (a) Section 204(a)(1) of the Federal Water Pollution Control Act is amended to read as follows:*

> *"(1) that any required areawide waste treatment management plan under section 208 of this Act (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment works will be included in such plan;".*

*(b) Section 204(a)(2) of the Federal Water Pollution Control Act is amended to read as follows:*

*"(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 303(e) of this Act and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with section 305(b) of this Act;".*

*(c) The amendments made by subsections (a) and (b) of this section shall take effect two years after the date of enactment of this Act.*

### *USER CHARGES ON LOW-INCOME RESIDENTIAL USERS*

*SEC. 15. Section 204(b)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (A) of this paragraph, if the Administrator determines that such system was adopted after public notice and hearing.".*

### *ALLOTMENT OF CONSTRUCTION GRANT FUNDS*

*SEC. 16. (a)(1) Section 205(c)(2) of the Federal Water Pollution Control Act is amended by adding after the first sentence the following: "Sums authorized to be appropriated* *pursuant to section 207 for the fiscal years 1986, 1987, and 1988 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Water Quality Renewal Act of 1984.".*

*(2) The third sentence of section 205(c)(2) of the Federal Water Pollution Control Act is amended by striking out "and September 30, 1985," and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988,".*

*(b) Section 205(e) of the Federal Water Pollution Control Act is amended by striking out "and 1985" each place it appears and inserting in lieu thereof "1985, 1986, 1987, and 1988" and by striking out "thirty-three one-hundredths of 1 per centum" and inserting in lieu thereof "two-thirds of 1 per centum".*

*(c)(1) Section 205(g)(1) of the Federal Water Pollution Control Act is amended by striking out "1985" and inserting in lieu thereof "1988".*

*(2) Section 205(g) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph:*

*"(3) The Administrator shall reserve each fiscal year beginning after September 30, 1984, $900,000 from the sums available to the State of New York under this subsection for such fiscal year, $900,000 from the sums available to*

*the State of New Jersey under this subsection for such fiscal year, and $200,000 from the sums available to the State of Connecticut under this subsection for such fiscal year. Sums reserved under this paragraph shall be used by the Administrator to make a grant for each such fiscal year to the Interstate Sanitation Commission established by such States by interstate compact to carry out the functions of such Commission under this Act.".*

*(d) Section 205(i) of the Federal Water Pollution Control Act is amended by striking out "and September 30, 1985" and inserting in lieu thereof "September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988".*

*(e) Section 205(j)(3) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "In giving such priority, the State shall allocate at least 50 percent of the amount granted to such State for a fiscal year under this subsection to regional and interstate public comprehensive planning organizations in such State, except in any fiscal year for which the Administrator and the Governor of such State determine jointly that allocation of at least 50 percent to such organizations will not substantially assist in achieving the goals of this Act.".*

*(f) Section 205 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:*

*"(l) One-quarter of one percent of any amount appropriated under section 207 of this Act for any fiscal year beginning after September 30, 1984, shall be reserved by the Administrator for carrying out investigations and audits authorized by this Act of projects for which funds are made available under this title.".*

*(g)(1) The Administrator of the Environmental Protection Agency (hereinafter in this subsection referred to as the "Administrator") shall make a grant from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal year 1985 to the city of Avalon, California, for improvements to the publicly owned treatment works of such city.*

*(2) The Administrator shall make a grant of $2,337,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Ohio for fiscal year 1985 to the owners of the Rocky River Wastewater Treatment Plant in Rocky River, Ohio, for reimbursement of such owners for the cost of construction of such plant.*

*(3) The Administrator shall make grants from funds allotted under section 205 of the Federal Water Pollution Con-*

*trol Act to the State of Pennsylvania for fiscal year 1985 to Walker Township, Pennsylvania, for developing a collector system and connecting its wastewater treatment system into the Huntingdon Borough, Pennsylvania, sewage treatment plant, and to Smithfield Township, Pennsylvania, for rehabilitating and extending its collector system.*

*(4)(A) The Administrator shall make a grant to the Elk Pinch Public Service District, Kanawha County, West Virginia, in amounts not exceeding $3,000,000 from funds allotted to the State of West Virginia under section 205 of the Federal Water Pollution Control Act for fiscal years beginning after September 30, 1984. Such grants shall be for 100 per centum of the cost of constructing the portion of the wastewater treatment works of such district which is not yet constructed and shall be in addition to the Federal share of eligible costs of such project otherwise allowable.*

*(B) As a condition to receiving a grant under this paragraph, the Elk Pinch Public Service District shall agree to take necessary steps, including litigation, to recover funds from parties against whom such district has claims for damages relating to the planning, designing, constructing, and financing of such wastewater treatment works. Amounts recovered under the preceding sentence, to the extent such amounts do not exceed the amount of grants made under this paragraph, shall be paid to the Administrator and shall be*

*added to the allotment of the State of West Virginia under section 205 of the Federal Water Pollution Control Act for the first fiscal year following such payment.*

*(5) Notwithstanding section 201(g)(1) of the Federal Water Pollution Control Act or any other provision of law, the Administrator shall make a grant of $250,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Kentucky for fiscal year 1985 to the city of Taylor Mill, Kentucky, for the repair and reconstruction, as necessary, of the publicly owned treatment works of such city.*

### *GRANTS TO STATES FOR ESTABLISHMENT OF WATER POLLUTION CONTROL REVOLVING FUNDS*

*SEC. 17. (a) Title II of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new section:*

### *"GRANTS TO STATES FOR REVOLVING FUNDS*

*"SEC. 220. (a) The Administrator shall make a grant to each State of the funds allotted to such State under this section for any fiscal year for deposit in a Water Pollution Control Revolving Fund established by such State under subsection (b)(2) of this section, for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works (as defined in section 212 of this Act) which are publicly owned.*

*"(b)(1) A grant shall not be made for a fiscal year to a State under this section unless the State has first deposited in the fund established by such State under this section an amount equal to 20 percent of the amount allotted to such State for such fiscal year.*

*"(2) Each State shall submit to the Administrator annually a certification—*

*"(A) that upon completion of any project for treatments works for which financial assistance is made available under this section, discharges from such treatment works will meet all applicable requirements necessary to achieve applicable State and Federal water quality standards; and*

*"(B) that such State will comply with all provisions of this section.*

*"(3) Each State shall establish a Water Pollution Control Revolving Fund to provide assistance under this section. Such State shall deposit in such fund any Federal funds allotted to such State under this section, any amounts received by such State for repayment of loans made by such State with amounts in such fund, any amounts required to be deposited in such fund under subsection (b)(1), and any additional funds (except for funds received under any other section of this title) which such State wishes to deposit in such fund.*

*"(c)(1) A State may use amounts in the fund established by such State under this section only to make loans, loan guarantees, payments to reduce interest on loans and loan guarantees, bond interest subsidies, and bond guarantees to municipalities and intermunicipal and interstate agencies.*

*"(2) In addition, to the extent provided by State law, any State may issue revenue or general obligation bonds using amounts in the fund established by such State under this section as a source of revenue or security for the payment of interest and principal on such bonds, if the proceeds of the sale of such bonds are deposited in such fund. No municipality or intermunicipal or interstate agency shall receive a loan from the fund unless such municipality or agency establishes a dedicated source of revenue for the repayment of such loan.*

*"(3) A State may provide assistance under this section to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Administrator under any other section of this title.*

*"(4) A State may provide financial assistance from the fund established by such State under this section for any project which is on the State's priority list under section 216 of this Act.*

*"(d) Notwithstanding any other provision of this section, a State may make assistance available under this section from the fund established by such State under this section to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works. If the recipient of a grant under section 201(g) of this Act for construction of treatment works receives an allowance under section 201(l)(1) for non-Federal funds expended for such planning and preparation and such recipient has received a loan under this first sentence of this subsection, such recipient shall promptly repay such loan to the extent of such allowance.*

*"(e)(1) Each State shall annually make a full and complete report to the Administrator concerning the use of Federal funds made available under this section in such manner as the Administrator shall prescribe.*

*"(2) The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of Federal funds shall be conducted in accordance with the auditing procedures of the General Accounting Office.*

*"(f) The provisions of this title shall not apply to financial assistance under this section, except to the extent provided in this section.*

*"(g)(1) There is authorized to be appropriated to carry out this section not to exceed $1,600,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988.*

*"(2) Sums authorized to be appropriated to carry out this section for any fiscal year shall be allotted by the Administrator in the same manner and in accordance with the same table as if such funds were authorized to be appropriated under section 207 of this Act for such fiscal year. Sums allotted to a State for a fiscal year shall remain available for a grant to such State for the fiscal year for which authorized and for the following fiscal year. Any funds granted to a State for a fiscal year under this section which are not utilized by such State for any of the purposes of this section during such fiscal year and the following fiscal year shall be repaid to the Administrator for reallotment among the other States.".*

*(b) Section 207 of the Federal Water Pollution Control Act is amended by striking out "and 209" and inserting in lieu thereof ", 209, and 220".*

### *INNOVATIVE TECHNOLOGY COMPLIANCE DEADLINES FOR DIRECT DISCHARGERS*

*SEC. 18. Section 301(k) of the Federal Water Pollution Control Act is amended by striking out "July 1, 1987," and inserting in lieu thereof "two years after the date for compliance with such effluent limitation which is otherwise applicable under such subsection,".*

### *COAL REMINING OPERATIONS*

*SEC. 19. Section 301 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsection:*

*"(n)(1) Notwithstanding any other provision of this Act, in the case of any coal remining operation, effluent limitations under this Act shall apply only to that portion of the discharge from such operation which exceeds the discharge from the site of such operation immediately before the beginning of such operation.*

*"(2) For purposes of this subsection, the term 'coal remining operation' means any coal mining operation which begins after the date of enactment of this subsection at a site at which coal mining was conducted before such date which was not, at the time such mining was conducted, subject to the requirements of title V of the Surface Mining Control and Reclamation Act of 1977.".*

### *WATER QUALITY CRITERIA*

*SEC. 20. (a) Section 304(a)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "In developing, publishing, and revising criteria under this paragraph after the date of enactment of this sentence, the Administrator shall consider, among other things, the effects on the ecosystem of (i) water hardness, (ii) pH, (iii) chemical and physical interactions, (iv) persistence of pollutants and the long-term effects of pollutants, (v) sedimentation from chemical reaction of pollutants, (vi) the absorptive properties of sediments, (vii) resuspension, and (viii) bio-uptake.".*

*(b) Section 304(a)(1) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following: "New or revised criteria under this paragraph should be established so as to provide an ample margin of safety to protect human health and fish and wildlife resources. Whenever, in developing new or revised criteria under this paragraph with respect to a pollutant, the Administrator determines that a well-founded and significant difference of opinion exists as to the latest scientific and research knowledge on the matters referred to in the preceding sentence, the Administrator shall publish a description of such difference of opinion along with the publication of such criteria.".*

### *PRETREATMENT STANDARDS*

*SEC. 21. (a) Section 307(b) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph:*

*"(5)(A) Upon the request of any source which is subject to two or more pretreatment standards which are promulgated under this subsection before the date of enactment of this paragraph and for which more than one compliance date is prescribed, the Administrator may establish a single compliance date for all such standards in accordance with this paragraph. Such a single compliance date shall be not later than one year after the first of such compliance dates or not later than the last of such compliance dates, whichever first occurs. The Administrator shall not establish a single compliance date under this paragraph unless the applicant demonstrates to the satisfaction of the Administrator that the establishment of a single compliance date will result in compliance by the applicant with all such standards earlier than would be the case in the absence of such single date.*

*"(B) In determining whether a single compliance date should be established under this paragraph and in determining what that date should be, the Administrator shall consider, among other things (i) the extent to which the technology which is the basis for one of the applicable pretreatment standards is inconsistent with the technology which is the*

*basis for another of the applicable pretreatment standards, (ii) the extent to which the later pretreatment standards require additional technology, whether or not such technology is inconsistent with the technology which is the basis for one or more of the earlier pretreatment standards, and (iii) the extent to which achieving compliance with the later standards at an earlier date is practicable based on engineering, design, and construction factors.".*

*(b) Notwithstanding any other provision of law or rule or regulation to the contrary, the date for compliance with pretreatment standards under section 307(b) of the Federal Water Pollution Control Act for the electroplating point source category, as that category is described at page 9404 of volume 46 of the Federal Register (January 28, 1981), shall be December 31, 1984, except that the Administrator may extend the date for compliance with such standards to a date not later than July 31, 1985, as determined appropriate by the Administrator, with respect to any point source which submits a report to the Administrator not later than December 31, 1984, which (1) complies with the requirements of section 403.12 of title 40, Code of Federal Regulations, in all respects (other than the compliance schedule), and (2) contains a compliance schedule adequate to achieve compliance with such pretreatment standards not later than July 31, 1985.*

*(c) The Administrator of the Environmental Protection Agency shall take such actions as may be necessary to increase the number of employees of such agency in order to effectively implement pretreatment requirements under section 307 of the Federal Water Pollution Control Act.*

*(d) Section 307 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following:*

*"(e) In the case of any new or existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 301(k) of this Act, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may establish a date for compliance with the applicable pretreatment standard not later than two years after the date for compliance with such applicable standard (1) if the Administrator determines that (A) the innovative system has the potential for industry-wide application, and (B) the action will not cause the publicly owned treatment works to be in violation of its permit under section 402, and (2) if the Administrator (or the State, in any case in which the State has a pretreatment program approved by the Administrator) concurs with the proposed action of the owner or operator of such treatment works under this subsection.".*

### *CRIMINAL PENALTIES*

*Sec. 22. Section 309(c) of the Federal Water Pollution Control Act is amended to read as follows:*

*“(c)(1) Any person who—*

*“(A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or*

*“(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State;*

*shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If a conviction of a* *person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment of not more than two years, or by both.*

*"(2) Any person who—*

*"(A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or*

*"(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State;*

*shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for* *not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $100,000 per day of violation, or by imprisonment of not more than four years, or by both.*

*"(3) It shall be an affirmative defense under paragraphs (1)(B) and (2)(B) of this subsection that the introduction of any pollutant or hazardous substance into a sewer system or a publicly owned treatment works was in compliance with all applicable Federal, State, and local requirements which govern the introduction of a pollutant or hazardous substance into a sewer or publicly owned treatment works.*

*"(4) Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both.*

*"(5) For the purpose of this subsection, the term 'person' means, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.*

*"(6) For the purpose of this subsection, the term 'hazardous substance' means (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".*

### *ADMINISTRATIVE PENALTIES*

*SEC. 23. Section 309 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following:*

*"(g)(1) Whenever on the basis of any information available to him—*

*"(A) the Administrator finds that any person is in violation of section 301, 302, 306, 307, 318, or 405*

*of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by him or by a State, or*

*"(B) the Secretary of the Army, acting through the Chief of Engineers (hereinafter referred to as the 'Secretary') finds that any person is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 404 of this Act by a State,*

*he may, after consultation with the State in which the violation occurs, assess a civil penalty of not more than $10,000 per day of violation, except that such penalty shall not exceed a total of $75,000.*

*"(2)(A) A civil penalty shall be assessed under this subsection by the Administrator or Secretary, as the case may be, by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator or Secretary, as the case may be, shall give written notice to the person to be assessed a civil penalty under such order of the Administrator's or Secretary's proposal to issue such order and provide such person an opportunity to request, within 15*

*days of the date the notice is received by such person, such a hearing on the order.*

*"(B) In determining the amount of a civil penalty, the Administrator or Secretary, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, economic savings (if any) resulting from the violation, and such other matters as justice may require.*

*"(C) The Adminstrator or Secretary, as the case may be, may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.*

*"(3) Any person who requested in accordance with paragraph (2)(A) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition*

*may only be filed within the 30-day period beginning on the date the order making such assessment was issued.*

*"(4) If any person fails to pay an assessment of a civil penalty—*

*"(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or*

*"(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator or the Secretary, as the case may be,*

*the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.*

*"(5) The Administrator or Secretary, as the case may be, shall have the authority to issue subpoenas in connection with hearings under paragraph (2) of this subsection and may request the Attorney General to bring an action to enforce any subpena under this subsection. The district courts shall have jurisdiction to enforce such subpenas and impose sanctions.*

*"(6) Action taken by the Administrator or Secretary, as the case may be, pursuant to this subsection shall not affect or limit the Administrator's or Secretary's authority to enforce any provision of this Act, except that any violation with respect to which a civil penalty is imposed under this subsection shall not be subject to a civil penalty under section 309(d) or section 311(b) of this Act.*

*"(7) When a State has proceeded with an enforcement action relating to a violation with respect to which the Administrator or the Secretary is authorized to assess a civil penalty under this subsection, the Administrator and the Secretary are not authorized to take any action under this subsection if the State demonstrates that the State imposed penalty is appropriate.".*

### *CLEAN LAKES*

*SEC. 24. (a) Section 314(a)(1) of the Federal Water Pollution Control Act is amended by striking out "fresh water".*

*(b) Section 314 of the Federal Water Pollution Control Act is amended—*

*(1) in subsection (b), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (a) of this section";*

*(2) in subsection (c)(1), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking*

*out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section"; and*

*(3) in subsection (c)(2), by striking out "this section" the first place it appears and inserting in lieu thereof "subsection (b) of this section" and by striking out "this section" the second place it appears and inserting in lieu thereof "subsection (a) of this section".*

*(c) Section 314 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:*

*"(d)(1) The Administrator shall make grants to States for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The Administrator shall provide an equitable distribution of such sums to the States.*

*"(2) The amount granted to a State for a project under this subsection shall not exceed 70 per centum of the cost of such project.*

*"(3) There is authorized to be appropriated to carry out this subsection not to exceed $100,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989. Sums appropriated shall remain available until expended.*

*"(e)(1) Any State may prepare, and submit to the Administrator for his approval—*

*"(A) a survey of water quality deterioration in lakes and other waters in such State which has resulted from high acidity which may be due to acid deposition, and*

*"(B) methods and procedures which may be applied to lakes and other waters in such State to restore water quality, insofar as such quality has deteriorated as a result of high acidity which may be due to acid deposition.*

*"(2)(A) The Administrator shall make grants to States to carry out methods and procedures approved by the Administrator under this subsection. Such methods may include, but are not limited to, (i) innovative methods of neutralizing and restoring buffering capacity of lakes and other waters that have become so acidic as to endanger game fish species, and (ii) methods of removing from lakes and other bodies of water toxic metals and other toxic substances mobilized by high acidity.*

*"(B) The amount granted under this section to any State for any fiscal year shall not exceed 80 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under this subsection.*

*"(C) The Administrator shall provide for an equitable distribution of sums appropriated under this subsection among States with approved methods and procedures. Such distribution shall be based on the relative need of each such State for the restoration of water quality which has deteriorated as a result of high acidity which may be due to acid deposition. The amount of any grant to a State under this subsection shall be in addition to, and not in lieu of, any other Federal financial assistance.*

*"(3) There is authorized to be appropriated to carry out this subsection $25,000,000 per fiscal year for each of the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, and September 30, 1989. Amounts appropriated under this subsection shall remain available until expended.*

*"(f) The Administrator shall submit annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status and trend of water quality in lakes in the United States, including but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.*

*"(g) The Administrator shall, in cooperation with the State of Texas, study water quality problems in Lake Houston, Houston, Texas, and undertake such control measures as the Administrator and State determine are necessary to improve water quality. Such study shall include, but not be limited to, the evaluation of the feasibility of regional or consolidated waste treatment facilities and the development of recommendations for the cost-effective control of pollutants entering the Lake Houston watershed. The Administrator shall submit a report of such study and identify such structural or nonstructural controls which were undertaken or are proposed, along with recommendations for further measures, to improve the water quality of Lake Houston, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than two years after the date of enactment of this subsection. There is authorized to be appropriated for fiscal years beginning after September 30, 1984, $10,000,000 to carry out this subsection, to remain available until expended.*

*"(h) The Administrator, in cooperation with the Secretary of the Army, acting through the Chief of Engineers, and in consultation with appropriate State and local agencies, shall conduct a one-year comprehensive study of the Beaver Lake, Arkansas, to identify measures which will optimize*

*achievement of the purposes for which Beaver Dam was constructed while preserving and enhancing the quality of the reservoir's water. Upon completion of the study the Administrator shall undertake a demonstration project at Beaver Lake to determine the effectiveness of measures identified in such study for preserving and enhancing the quality of the reservoir's water for current and future users. Upon completion of the demonstration project the Administrator shall submit a report of such study and project, along with recommendations for further measures to improve the water quality of Beaver Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. Funds appropriated under subsections (c), (d) and (e) of this section shall be available to carry out this subsection.*

*"(i) The Administrator shall undertake a demonstration project for the removal of silt, stumps, and other obstructions from Greenwood Lake and Belcher Creek, New Jersey. Upon completion of the demonstration project the Administrator shall submit a report of such project, along with recommendations for further measures to improve the water quality of Greenwood Lake and Belcher Creek, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public*

*Works of the Senate. There is authorized to be appropriated $10,000,000 to carry out this subsection.*

*"(j) The Administrator shall undertake a demonstration project for the removal of silt and stumps from, and the control of pollution from nonpoint sources in, Deal Lake, Monmouth County, New Jersey. Upon completion of the demonstration project, the Administrator shall submit a report of such project, along with recommendations for further measures to improve the water quality of Deal Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. There is authorized to be appropriated $8,000,000 to carry out this subsection.*

*"(k) The Administrator shall undertake a demonstration project for the restoration of Alcyon Lake, New Jersey, including removal and disposal of contaminated sediments in the lake. Upon completion of the demonstration project, the Administrator shall submit a report of such project, along with recommendations of further measures to improve the water quality of Alcyon Lake, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate. There is authorized to be appropriated $3,500,000 to carry out this subsection.".*

### *NPDES PERMITS*

*SEC. 25. (a)(1) Section 402(b)(1)(B) of the Federal Water Pollution Control Act is amended to read as follows:*

> *"(B) are for fixed terms not exceeding ten years, except in the case of a permit which modifies any requirement of this Act under section 301(c), (g), (h), or (m) of this Act and except in any case in which the State determines that the applicant has not consistently complied with any permit held by such applicant under this section, in which cases such permits shall be issued for fixed terms not exceeding five years;".*

*(2) Section 402(b)(1) of the Federal Water Pollution Control Act is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following:*

> *"(D) must be modified promptly to insure compliance with any new or revised effluent limitation under section 307(a) of this Act which is more stringent than an effluent limitation in the permit or which controls a pollutant not controlled in the permit; and".*

*(b) Section 402(l) of the Federal Water Pollution Control Act is amended by inserting "(1)" after "(l)" and by adding at the end thereof the following new paragraph:*

*"(2) The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly*

*require any State to require such a permit for discharges of stormwater runoff from mining operations or oil or gas exploration, production, processing, or treatment operations, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated with process wastes, overburden, raw materials, toxic pollutants above natural background levels, spilled product, hazardous substances in excess of reportable quantities as determined by the Administrator, or oil or grease.".*

*(c) Section 402 of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new subsections:*

*"(m) To the extent a treatment works (as defined in section 212 of this Act) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a discharger of conventional pollutants identified pursuant to section 304(a)(4) of this Act which are introduced into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1)*

*of this Act. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.*

*"(n)(1) The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.*

*"(2) A partial permit program under this subsection shall cover at a minimum administration of a major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).*

*"(3) The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if—*

*"(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and*

*"(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b).*

*"(4) The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if—*

*"(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b); and*

*"(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than five years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.".*

*(d)(1) Section 402(c)(1) of the Federal Water Pollution Control Act is amended by striking out "as to those navigable waters" and inserting in lieu thereof "as to those discharges".*

*(2) Section 402(c) of the Federal Water Pollution Control Act is amended by adding at the end thereof the following new paragraph:*

*"(4) A State may return administration of its permit program to the Administrator, and the Administrator may withdraw approval of a State permit program under paragraph (3) of this subsection (A) in the case of any approval*

*under subsection (n)(3), the entire permit program being administered by the State department or agency at the time of such return or withdrawal, as the case may be, or (B) in the case of any approval under subsection (n)(4), any phased component approved at the time of such return or withdrawal, as the case may be.".*

*(e) Notwithstanding any other provision of law, for a period not exceeding ten years from the date of enactment of this subsection, the Administrator of the Environmental Protection Agency shall administer the terms of the following permits according to the terms contained therein, but in no event shall the Administrator require discharge standards to be less than those in effect on May 10, 1984:*

*(1) Alaska Lumber and Pulp Company, located at Sitka, Alaska (NPDES permit numbered AK000053-1); and*

*(2) Louisiana-Pacific Corporation, located at Ketchikan, Alaska (NPDES permit numbered AK000092-2).*

### *AGRICULTURAL STORMWATER DISCHARGES*

*SEC. 26. Section 502(14) of the Federal Water Pollution Control Act is amended by inserting after "include" in the last sentence thereof the following: "agricultural stormwater discharges and".*

### *NEWTOWN CREEK, NEW YORK*

*SEC. 27. The Administrator is authorized to make a grant to the city of New York to install such additional facilities in, and make such modifications to, the Newtown Creek sewage treatment plant as are necessary for the plant to provide secondary treatment. The Federal share of such project shall be 75 percent of the cost of installing such facilities and making such modifications. There is authorized to be appropriated such sums as may be necessary to carry out this section for fiscal years beginning after September 30, 1984, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.*

### *SAN DIEGO, CALIFORNIA*

*SEC. 28. (a) For purposes of protecting the economy, public health, environment, surface water and public beaches, and water quality of the city of San Diego, California, and surrounding areas, which are endangered and are being polluted by raw sewage emanating from the city of Tijuana, Mexico, upon application of the city of San Diego, the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") shall make grants to such city for construction of a project consisting of—*

*(1) a publicly owned treatment works in such city to provide primary or more advanced treatment of not*

*less than 60,000,000 gallons of municipal sewage and industrial waste per day for the city of Tijuana, Mexico; and*

*(2) a publicly owned treatment works in such city to provide primary or more advanced treatment of such amount of municipal sewage and industrial waste per day for such city of San Diego as may be necessary to meet the objectives of the Federal Water Pollution Control Act.*

*(b) Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the city of San Diego and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.*

*(c) The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial waste for the cities of Tijuana and San Diego.*

*(d) All provisions of the Federal Water Pollution Control Act which are applicable to grants made under section 201(g) of such Act shall apply to grants made under this section to provide treatment of municipal sewage and industrial waste for the city of San Diego.*

*(e) The Federal share of the cost of construction of the treatment works to provide treatment of municipal sewage and industrial waste for the city of Tijuana shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.*

*(f) Upon application of the city of San Diego, the Administrator may issue a permit under section 402 of the Federal Water Pollution Control Act which modifies the requirements of section 301(b)(1)(B) of such Act to permit the discharge of pollutants for any ocean outfall constructed with Federal assistance under this Act if such pollutants have received primary or more advanced treatment. Any permit issued pursuant to this subsection shall not be effective after December 31, 1993.*

*(g) If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste for the city of Tijuana has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the city of San Diego.*

*(h) For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.*

*(i) There is authorized to be appropriated to the Administrator to make grants under this section for fiscal years beginning after September 30, 1984, such sums as may be necessary.*

### *NACO, ARIZONA*

*SEC. 29. (a) For purposes of protecting the economy, public health, environment, and surface and ground water of the community of Naco, Arizona, which are in danger and are being polluted by raw sewage emanating from the community of Naco, Sonora, Mexico, upon application of the city of Naco, Arizona, the Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the "Administrator") shall make grants to such city for construction of a project consisting of a publicly owned treatment works in such city to provide primary or more advanced treatment of not less than 150,000 gallons of untreated sewage emanating from the city of Naco, Sonora, Mexico.*

*(b) Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the city of Naco, Arizona, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.*

*(c) The Federal share of the cost of construction of the treatment works described in subsection (a) shall be at full*

*Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.*

*(d) For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.*

*(e) There is authorized to be appropriated to the Administrator $2,000,000 to make grants under this section for fiscal years beginning after September 30, 1984.*

### *LIMITATION ON DISCHARGE OF RAW SEWAGE*

*SEC. 30. (a) After March 15, 1986, the city of New York shall not discharge raw sewage into navigable waters in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily discharge of raw sewage by the city of New York during the 12-month period preceding March 15, 1986 (as determined by the Administrator of the Environmental Protection Agency), except as provided in subsection (b) of this section.*

*(b) In the event of any significant interruption in the operation of a wastewater treatment plant which is operated by the city of New York, the Administrator of the Environmental Protection Agency may waive the limitations of subsection (a), but only to such extent and for such limited period of time as may be reasonably necessary for such city to resume such operation.*

*(c) The Administrator of the Environmental Protection Agency shall undertake measures, including modifications of schedules of compliance, to reduce and eliminate at the earliest practicable date, the discharge of raw sewage by the city of New York taking into account any increase in the authorization for grants for construction of treatment works made by this Act and standards and practices which are necessary for the attainment of that water quality which assures protection of public water supplies, protection of the public health, and the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water.*

### *JEFFERSON COUNTY, KENTUCKY*

*SEC. 31. The Okolona Sewer Construction District, Jefferson County, Kentucky, shall be permitted to operate the Okolona Sewer Construction District Treatment Works and shall not be required to use any other facility for wastewater treatment, until such time as the West County Wastewater Treatment Plant, Jefferson County, Kentucky, is completed. The Administrator shall issue a permit under section 402 of the Federal Water Pollution Control Act to carry out this section.*

### *BOSTON, MASSACHUSETTS*

*SEC. 32. The Administrator of the Environmental Protection Agency is authorized and directed to make grants to the Metropolitan District Commission, Massachusetts, for a* *project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts. The Federal share of such project shall not exceed 75 percent of the cost of carrying out such improvements. There is authorized to be appropriated to carry out this section $10,000,000 per fiscal year for each of the fiscal years 1985, 1986, and 1987.*

### *OAKWOOD BEACH AND RED HOOK PROJECTS, NEW YORK*

*SEC. 33. Notwithstanding any provision of the Federal Water Pollution Control Act, the Administrator of the Environmental Protection Agency shall pay, to the extent provided in appropriation Acts, in the same proportion as the Federal share of other project costs, all expenses for the relocation of facilities for the distribution of natural gas with respect to the entire wastewater treatment works known as the Oakwood Beach (EPA Grant Numbered 360392) and Red Hook (EPA Grant Numbered 360394) projects, New York. There is authorized to be appropriated for fiscal years beginning after September 30, 1984, not to exceed $9,000,000 to carry out this section.*

### *CHIPPEWA TOWNSHIP, PENNSYLVANIA*

*SEC. 34. In order to protect the public health, environment, and water quality endangered by the destruction of the Chippewa Township, Pennsylvania, sewage treatment facility and the resultant raw sewage discharge into Brady's Run, Pennsylvania, the Administrator of the Environmental Pro-*

*tection Agency is directed to undertake such measures as may be necessary (including but not limited to removal of accumulated raw sewage) to restore the quality of the waters adversely affected by such discharge.*

### *STUDY OF REGULATION OF DE MINIMIS DISCHARGES*

*SEC. 35. The Administrator of the Environmental Protection Agency shall study the feasibility and desirability of eliminating the regulation of discharges of pollutants into the navigable waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant. The Administrator shall submit a report of such study along with recommendations to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of enactment of this Act.*

### *STUDY OF EFFECTIVENESS OF INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES*

*SEC. 36. The Administrator of the Environmental Protection Agency shall study the effectiveness on waste treatment of innovative and alternative wastewater treatment processes and techniques referred to in section 201(g)(5) of the Federal Water Pollution Control Act which have been utilized in treatment works constructed under such Act. In conducting such study, the Administrator shall compile information, by State, on the types of such processes and techniques utilized, on the number of facilities constructed with* *such processes and techniques, and a description of such processes and techniques which have not performed to design standards. The Administrator shall also determine which States have not obligated the full amount set aside under section 205(i) of such Act for such processes and techniques and the reasons for each such State's failure to make such obligations. The Administrator shall submit a report of such study to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than two years after the date of enactment of this Act, along with recommendations for providing more effective incentives for innovative and alternative wastewater treatment processes and techniques.*

### *WATER QUALITY IMPROVEMENT STUDY*

*SEC. 37. (a) The Administrator of the Environmental Protection Agency shall study the water quality improvements which have been achieved by application of best available technology economically achievable pursuant to section 301(b)(2) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the effectiveness of, and the costs and benefits associated with, application of best available technology economically achievable pursuant to such section and an analysis of the effectiveness of the water quality program under such Act and methods of improving such program, including site specific levels* *of treatment which will achieve the water quality goals of such Act in a cost-effective manner.*

*(b) Not later than two years after the date of enactment of this Act, the Administrator shall submit a report on the results of the study conducted under subsection (a) together with recommendations for improving the water quality program and its effectiveness to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.*

### *STUDY OF TESTING PROCEDURES*

*SEC. 38. (a)(1) The Administrator of the Environmental Protection Agency shall study the testing procedures for analysis of pollutants established under section 304(h) of the Federal Water Pollution Control Act. Such study shall include, but not be limited to, an analysis of the adequacy and standardization of such procedures. In conducting the analysis of the standardization of such procedures, the Administrator shall consider the extent to which such procedures are consistent with comparable procedures established under other Federal laws.*

*(2) Not later than one year after the date of enactment of this Act, the Administrator shall submit a report on the results of the study conducted under this subsection, together with recommendations for modifying the test procedures referred to in paragraph (1) to improve their effectiveness, to the Committee on Public Works and Transportation of the*

*House of Representatives and the Committee on Environment and Public Works of the Senate.*

*(b) Biennially after the date of submission of the report under subsection (a), the Administrator shall conduct a state-of-the-art review of the test procedures for the analysis of pollutants established under subsection (a) for the purpose of determining the adequacy and effectiveness of such procedures and shall, based on the results of such review, submit to the committees referred to in subsection (a)(2) recommendations for modifying such procedures to improve their effectiveness.*

### *STUDY OF PRETREATMENT OF TOXIC POLLUTANTS*

*SEC. 39. (a) The Administrator of the Environmental Protection Agency shall study—*

*(1) the adequacy of data on environmental impacts of toxic industrial pollutants discharged through publicly owned treatment works;*

*(2) the extent to which secondary treatment at publicly owned treatment works removes toxic pollutants;*

*(3) the capability of publicly owned treatment works to revise pretreatment requirements under section 307(b)(1) of the Federal Water Pollution Control Act;*

*(4) possible alternative regulatory strategies for protecting the operations of publicly owned treatment*

*works from industrial discharges, including an evaluation of the extent to which each such strategy identified may be expected to achieve the goals of this Act; and*

*(5) the adequacy of Federal, State, and local resources to establish, implement, and enforce multiple pretreatment limits for toxic pollutants for each alternative strategy identified in paragraph (4).*

*(b) The Administrator shall, not later than two years after the date of enactment of this Act, submit a report on the results of such study along with recommendations for improving the effectiveness of pretreatment requirements to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate.*

### *SULFIDE CORROSION STUDY*

*SEC. 40. (a) In order to protect the Federal and other investment in treatment works, the Administrator of the Environmental Protection Agency shall conduct a study of the problem of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate this problem, and the range of available options to deal with the effects.*

*(b) The study required by this section shall be conducted in consultation with the Los Angeles City and County sanitation agencies which have observed examples of corrosion,*

*probably caused by sulfides. The Administrator shall submit a report on the results of the study, together with recommendations for measures to reduce the corrosion of treatment works, to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate within one year of the date of enactment of this Act. There is authorized to be appropriated $2,000,000 to carry out this subsection for fiscal years beginning after September 30, 1984.*

ADMINISTRATION TESTIMONY AT HOUSE HEARINGS, 1983

# POSSIBLE AMENDMENTS TO THE FEDERAL WATER POLLUTION CONTROL ACT

(98-33)

# HEARINGS

BEFORE THE

SUBCOMMITTEE ON WATER RESOURCES

OF THE

COMMITTEE ON
PUBLIC WORKS AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

FEBRUARY 23; AUGUST 2; SEPTEMBER 20, 22; OCTOBER 18, 19, 20;
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# POSSIBLE AMENDMENTS TO THE FEDERAL WATER POLLUTION CONTROL ACT

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TUESDAY, NOVEMBER 15, 1983

House of Representatives,
Subcommittee on Water Resources,
Committee on Public Works and Transportation,
*Washington, D.C.*

The subcommittee met, pursuant to call, at 9:30 a.m., in room 2247, Rayburn House Office Building, Hon. Robert A. Roe (chairman of the subcommittee) presiding.

Mr. Roe. The subcommittee will come to order in continuation of our Clean Water Act hearings.

* * * * * * * *

Mr. Roe. Our next witness for today is the Honorable William D. Ruckelshaus, Administrator of the U.S. Environmental Protection Agency.

Is the Administrator here? Good afternoon, Mr. Administrator. We want to welcome you to our committee. If you would identify for the record your colleague.

Mr. Ruckelshaus, the full text of your prepared statement will appear in the record at this point.

**Note.--Additional material was supplied by Administration witnesses to the Subcommittee. Some of that material has been omitted from this legislative history and may be found in the record of the hearing.**

[Statement referred to follows:]

TESTIMONY OF WILLIAM D. RUCKELSHAUS, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY BEFORE THE SUBCOMMITTEE ON WATER RESOURCES, COMMITTEE ON PUBLIC WORKS AND TRANSPORTATION, U.S. HOUSE OF REPRESENTATIVES NOVEMBER 15, 1983

Good morning, Mr. Chairman and members of the subcommittee. I am pleased to be here to discuss reauthorization of the Clean Water Act. With me today are Jack Rovan, Assistant Administrator for Water, and Rebecca Hanmer, Deputy Assistant Administrator for Water.

This subcommittee held extensive hearings on the Clean Water Act last year. The breadth and detail of those hearings was impressive. Your 2,300 page report reflects the diligent efforts of both this subcommittee and its staff in considering mid-course modifications to a fundamentally sound piece of legislation.

I understand that the purpose of this series of hearings is to review the concerns and issues that have been raised in connection with reauthorization of the Clean Water Act. I think the most useful thing that I, as Administrator of the Environmental Protection Agency, can do, Mr. Chairman, is to define what I see as the significant problem areas, comment on some of the major proposals before this committee, and offer my own views as to what direction any mid-course corrections should take. I am prepared to provide whatever technical assistance and information you require in addressing the difficult issues facing this subcommittee.

The key issues have been clearly defined in the numerous bills, including H.R. 3182, presently before this subcommittee and the Administration's proposals, a copy of which I have attached to my testimony. I am happy to say that in my own mind, there are some issues on which there is no question.

The Clean Water Act is working. The control strategy formulated by Congress in 1972 and refined in 1977 has proven effective and successful. I have had first hand experience with the background and origins of the legislation and there simply is no doubt that we have seen impressive progress over the past decade. The act's strategic approach of requiring implementation of nationwide technology-based effluent limitations followed by any additional, needed controls based onsite-specific water quality concerns should be continued.

On other issues, our approach to key questions has been significantly strengthened by the useful comments we have received from Congress and the public on our original proposals, and by the other proposals which have been introduced in both Houses of Congress. Over the past several months our analysis of the major issues has continued, and I think we now have a better sense of what is reasonable, workable, and will yield results. Our analysis has also identified four additional issues which this committee may care to review. The most important of these, fundamentally different factors determinations—so called FDF's, are addressed in this statement. Brief explanations and proposed language on all four of these issues have been added to the Administration's proposals for the committee's consideration.

I hope that in discussing the major questions before us today, we can build on the reauthorization process begun last year and quickly complete the development of effective solutions to those problems.

## 1. CONSTRUCTION GRANTS FUNDING

One issue raised in H.R. 3282 that was not addressed last year is the proposal for increased Construction Grants funding. Under your leadership, Mr. Chairman, redirection and reauthorization of the Construction Grants program was considered in great detail 2 years ago and is reflected in the 1981 amendments to the Clean Water Act. The Administration continues to support the 1981 amendments and believes that the authorization levels set out in them are appropriate.

In 1985 Congress will have to determine whether the program should be continued or modified. After more than 25 years, I believe there should be a fundamental examination of whether the program should be targeted to small municipalities, modified to a loan program or turned over to the States under the Administration's New Federalism concept. Critical to all of these considerations is the need to determine the most appropriate federal role in obtaining expeditious compliance by municipal pollution control facilities with the enforceable requirements of the act.

EPA will be conducting a detailed study of issues related to the reauthorization of the construction grants program. We would be pleased to work with you as we complete the study.

Beyond the construction grants program, the key issues I would like to touch on today include industrial compliance deadlines, pretreatment, fundamentally different factors determinations, water quality standards, post-BAT controls, nonpoint source controls and enforcement.

### 2. INDUSTRIAL COMPLIANCE DEADLINES

Of all these issues, clearly the most urgent in this reauthorization process is the need to extend industrial compliance deadlines. Industrial facilities have less than a year to comply with the current July 1, 1984, deadline for achievement of Best Available Technology [BAT] and Best Conventional Technology [BCT] effluent limitations. In many cases they have not been issued permits upon which even to begin the compliance process due to delays in Agency promulgation of national effluent guidelines. EPA is now in the final stages of completing those guidelines. But the fact remains that the necessary period for permit issuance and compliance that Congress envisioned in 1977 has been drastically reduced.

A number of different proposals have been made to extend industrial deadlines. These proposals differ in terms of the effluent standards to which they would apply and how much additional time they would provide. What each of these proposals clearly recognizes is the need to extend industrial compliance deadlines.

In resolving the question of extensions, Mr. Chairman, I believe there are three objectives that any solution must address. First, any extension must recognize the time necessary to promulgate effluent guidelines, issue permits, and for dischargers to come into compliance. Second, the extension must contain a final compliance date which applies to all BAT/BCT related permits. Third, the language should provide clearly that if compliance can be achieved before the final date, then it must be.

One thing I am very concerned about after reviewing the various proposals is that any final compliance deadline must be realistic. A number of the legislative proposals do not provide adequate time for the regulatory agencies to translate the effluent guidelines into individual permits. The July 1, 1988, deadline contained in the administration proposal reflects, I believe, a realistic assessment of the time needed to complete issuance of the effluent guidelines, write implementing permits, and allow dischargers to come into compliance. Let me emphasize, Mr. Chairman, that the administration's proposal would not allow any additional time for dischargers which could achieve compliance before July 1, 1988. Where compliance could be achieved before July 1, 1988, the implementing permits would contain the earlier deadline.

Finally, the administration proposal does continue the incentive for innovative solutions now embodied in section 301(k) of the act.

There is no question that some form of deadline extension is needed, Mr. Chairman, and I would like to offer whatever assistance the committee may require in determining the most appropriate way to address that need.

### 3. PRETREATMENT

The toughest issue with which I have dealt thus far in connection with Clean Water Act reauthorization is pretreatment. This is a subject to which EPA has devoted a substantial amount of time, resources and effort. The fundamental objectives of this program under the act are to protect water quality, protect municipal sludge from contamination by industrial toxic wastes, and protect the operation of the POTW itself.

The need to achieve these goals is widely recognized and unquestioned. However, the best means of achieving them has been the subject of extensive debate since 1972. One of my principal concerns is that technology-based categorical pretreatment standards inherently will result in cases of over or under treatment. There may be cases in which full implementation of categorical pretreatment standards may not be necessary or may not be sufficient to achieve the goals of the program. The difficult question we all have been grappling with is how to address instances of potentially unnecessary treatment without opening a Pandora's box of technical difficulties, serious resource demands, administrative problems, and scientific uncertainties, and without delaying the program in those situations that need these controls.

With the gathering momentum of local pretreatment programs, and with the Agency's promulgation of categorical standards well underway, I am reluctant to recommend anything that will entail significant delay or loss of momentum. Of 1,700 POTW's required to develop local pretreatment programs, approximately 60 percent have now submitted some portion of the necessary elements for program approval. Of that group, roughly 370 have already received approval and are now ready to enforce categorical standards. Within this fiscal year, EPA and approved

States are expected to approve an additional 800 local pretreatment programs. In addition, the compliance deadline for one of the major groups affected by categorical standards, the electroplaters, is now less than a year away.

At the same time, I also feel strongly that, where possible, we must avoid the application of categorical pretreatment standards where they are not needed. For this reason I have pursued the concept of a pretreatment waiver. This is the reauthorization issue on which I have spent the most time. I have talked with staff at all levels in the Agency and met with outside groups in an effort to develop a workable approach to this problem.

I must confess, Mr. Chairman, this has been a frustrating effort for me. As attractive as the concept of relying on end-of-pipe effluent limitations to ensure protection of water quality seems, I have come to the difficult conclusion that it just is not feasible to administer such a program without a serious delay of two to three years in the program. The prerequisites of any successful national effort in this area are missing. Most States are only in the early stages of establishing specific ambient water quality criteria and permit effluent limitations for toxic substances. Furthermore, the national sludge disposal and use standards to be established by EPA are still several years away.

We could, of course, wait for the development of these effluent limitations and sludge standards, but I think the pretreatment program has now reached a stage where that would seriously jeopardize the progress that has been made to date. I think the Agency, indirect dischargers, and affected POTWs need to get on with implementing the program in a reasonable, rapid, and effective fashion.

Following my June 14 testimony before the Senate on this same subject, I directed my staff to go back and take a fresh look at the concerns of POTWs and municipalities and the problems associated with implementation of the existing program. After meeting with a number of groups to discuss operational concerns and explore alternatives, I have decided to establish a pretreatment implementation review task force. Its purpose will be to seek solutions to common implementation problems encountered by control and approval authorities. This will include developing equivalent industrial monitoring and municipal enforcement programs, and guidance on implementing production-based categorical standards and, where appropriate, to identify regulatory problems. To ensure a broad base of information, the task force will be made up of representatives of States, municipalities, industry, the environmental community, and EPA. It will include representatives of both large and small municipalities, as well as municipalities with both new and established programs.

It is my hope that as the recommendations of this task force are factored into the implementation process, some of the most significant technical concerns and objections we have heard will be resolved.

Earlier I mentioned the lack of sludge disposal and use criteria. I am pleased to report that we have now established a program for moving aggressively forward in filling the regulatory gaps in that area. The Agency's Sludge Task Force recently presented their findings to a senior-level Policy Committee. These included recommendations on how EPA should structure an integrated sluge regulatory program based upon the joint authority of section 405 of the Act and the appropriate provisions of EPA's other laws. The Committee has endorsed and forwarded those recommendations to me and has directed the Task Force to prepare a detailed workplan for initiating the effort. Although many details remain to be worked out, the broad outline of this program involves a comprehensive effort to develop standards and to formulate a State implementation process. These regulations will be supplemented by a general policy statement and general guidance which we will issue in fiscal year 1984. The regulation development effort will clearly take longer—probably in excess of 2 years—but resources within several key offices have already been redirected to support this undertaking. I am confident that this unified effort will produce a comprehensive sludge management program which will serve to ensure safer, more cost-effective, and more beneficial sludge management, and which can be integrated into the existing pretreatment program.

### 4. FUNDAMENTALLY DIFFERENT FACTORS DETERMINATIONS

In discussing pretreatment, I have emphasized the need to get on with implementation of the program. Of particular concern in this regard is a recent decision of the Third Circuit Court of Appeals as it relates to applying national effluent guidelines for indirect and, by implication, direct dischargers. Essentially, the Court held that the fundamentally different factors (FDF) determination procedure that EPA has had available for use in the application of national effluent guidelines for toxic pollutants is not authorized by the Act.

I strongly believe, Mr. Chairman, that the FDF determination procedure is an essential adjunct to the national rulemaking process. EPA has traditionally used this procedure as a "safety valve" in developing, implementing and defending effluent guidelines for existing sources. In going through the extraordinarily complex process of a national rulemaking, the FDF determination procedure permitted EPA to focus its data gathering and analysis on the more typical facilities and defer to subsequent proceedings those plants with unique features. This has resulted in both major cost savings and reductions in the time necessary for guideline development. By providing an administrative remedy for facilities that may not be able to meet national standards due to unique factors not considered in rulemaking, the FDF determination procedure reduces the legal vulnerability of the national standards.

There may be some concern that the administrative remedy provided by FDF determinations is somehow a regulatory "loophole". This simply is not the case. It should be noted that the FDF determination procedure may be used to develop requirements more stringent than those contained in the national effluent guidelines. Let me review very briefly how the FDF determination procedure works. A facility must first submit a petition demonstrating that there is some factor in its situation that is fundamentally different from those considered in establishing the national regulation. Only information not previously considered can be the basis for an FDF determination petition. In other words, this procedure cannot be used as a backdoor means of challenging and rearguing the regulation itself. Second, to establish a "fundamental difference", a facility must show that compliance with the national limits would result in either a removal cost wholly out of proportion to the removal cost considered by the Agency during the development of the national regulation or a fundamentally more adverse non-water quality impact. This is a very tough test to meet. Third, any alternative technology based limits may reflect only the degree of modification actually required by the fundamental difference. Fourth, in order to ensure that all points of view are considered, the public is informed of applications for FDF determinations and given the opportunity to participate in the proceeding.

The FDF determination procedure is not a waiver procedure, and in particular, is not an economic waiver procedure. Rather it is a procedure through which a facility receives an individualized determination of its technology-based effluent requirements. As such, it is analogous to the Agency's use of best professional judgement permit determinations to establish effluent limitations for industrial facilities whose national effluent guidelines have not been issued.

My point is very simple, Mr. Chairman. There are two approaches for responding to a facility with valid grounds for arguing that it is fundamentally different from other facilities in its category. One possibility is to develop a separate subcategory within the regulation, undertake a separate data collection and analysis effort, and then repropose and issue the final rule. The other alternative is to leave the national rule in place and use the FDF determination procedure to establish alternative technology-based limitations for the facility that accurately reflect its situation.

Let me emphasize that both of these approaches reflect the exercise of the Agency's regulatory expertise. Both of these approaches will involve a review of the same set of facts. Both involve the public. And both of these processes will end up with the same decision. So what is the difference?

Our major concern is that the subcategorization substantial additional time in developing what are already extraordinarily complex and detailed national regulations. In essence, this approach would require us to handle through modifications to nationally applicable regulations the special situations of single facilities. This simply is not efficient. By contrast, the FDF determination procedure allows both implementation of the national rule and consideration of individual petitions claiming unique factors.

For these reasons, I urge careful consideration of the attached draft language to clarify and confirm EPA's authority in this area.

### 5. WATER QUALITY STANDARDS POST-BAT

With the completion of the remaining effluent guidelines over the next year and the implementation of pretreatment and direct discharge standards, a reasonable question remains: What if these technology-based limitations are not stringent enough to protect designated water uses? In accordance with the Act's fundamental pollution control approach, reliance on strengthened and more sophisticated water quality standards will form the basis of EPA's post-BAT strategy.

Two issues come up in assessing any post-BAT strategy. The first is the adequacy of the water quality standards upon which control strategies will be based. Second is the strategy itself. Taking water quality standards first, I have read your letter of

March 14, Mr. Chairman, and understand that one of the main reasons for the current widespread concern over these standards has been the Agency's October 1982 proposed rulemaking to revise the existing water quality standards regulation. As I understand it, one of the principal purposes of this proposal was to make the standards setting process a better and more effective decisionmaking tool. Regardless of the Agency's intent, the proposed revisions apparently were viewed by the public as a retreat from the goals and objective of the Act in the areas of anti-degradation, downgrading and cost-benefit analysis.

In response to numerous comments we have received on this issue, and the major concern indicated by both the House and Senate, we have recently made further revisions to and promulgated the Agency's water quality standards regulation. Copies of our redrafted preamble and regulatory provisions have been provided to this Subcommittee for its information and use. I believe these additional revisions meet the concerns and objections that have been raised and both strengthen and clarify our national water quality standards program. Since our revised regulations will yield the same environmental results, I strongly urge that these provisions be deleted. Also, I would note that the Senate Committee on Environment and Public Works has agreed to delete the anti-degradation and downgrading provisions of their bill.

Section 6 of H.R. 3282 would address the issues of downgrading and anti-degradation by codifying a revised version of the existing water quality standards regulation. Both of these provisions would hamper the ability of EPA and the States to deal with site-specific problems.

H.R. 3282 would also add a provision requiring the use of numerical water quality criteria. This provision, requiring States to adopt numerical criteria for toxic pollutants, would essentially preclude States from using alternative means, such as biological criteria, of establishing water quality benchmarks. Under EPA's revised regulation, States must identify specific water bodies where toxic pollutants are causing problems, and must adopt criteria sufficient to protect the designated use. These criteria may be numerical or narrative and may be used singly or in combination, as needed. For example, where an effluent contains a few, readily identifiable toxic chemicals, then pollutant-specific criteria and effluent limitations will be used. In situations involving discharges of complex effluents, it may neither be feasible nor environmentally protective to use a numerical, pollutant-by-pollutant approach. In those cases, I believe it is more effective to use biological testing as the basis for setting aquatic toxicity limits. Because our revised regulations provide a more effective, flexible approach which we have adequate authority to implement, I recommend that this provision be deleted, or at least modified to provide the flexibility to use either approach.

With respect to a post-BAT control strategy, H.R. 3282 would require EPA to inventory nonattainment waters existing after the installation of technology-based controls, and then develop and implement in cooperation with the States an individual point source control strategy for each nonattainment waterbody.

EPA has been studying the need for toxic pollutant controls beyond BAT for some time. The Agency has also been very hard at work developing the methods, especially biological assessments, necessary to determine where toxic pollutants are causing problems and to determine necessary levels of control. While much work remains to be done, I am confident that the Agency is in a position to make these methods generally available during this fiscal year.

Where EPA or a State determines that BAT is not sufficient to protect the designated uses of the receiving waters, it issues permits which include more stringent effluent limitations. Where the data are not available or not conclusive to support such a determination, the source's permit will be written in incorporate BAT effluent limitations but will contain monitoring requirements that become effective once the BAT effluent limits are achieved. If this monitoring shows that the BAT effluent limitations do not protect designated water body uses, the permit will be reopened and additional requirements incorporated. All of this is currently authorized by the existing statute.

So while I support establishing controls beyond BAT when necessary, I feel that the Agency already has the authority to accomplish this. Therefore I believe statutory changes are neither necessary nor desirable. I would be happy to work with you in further explaining our concerns and reservations on this issue.

### 6. NONPOINT SOURCE POLLUTION CONTROL

Next, I would like to address the control of nonpoint sources of pollution. H.R. 4037 proposes a national program to assist State implementation of nonpoint source pollution controls. With the establishment of technology-based standards well underway for point sources, it is now time to turn our attention to the control of pollution from nonpoint sources. I believe there is no question that pollution from nonpoint sources is having significant adverse impacts on water quality in certain areas across the United States. The 1982 State water quality assessments report prepared under section 305(b) of the Act describes the nature of this problem: (1) in one-fifth of the States, nonpoint sources are now the most important cause of water degradation in those waters not meeting designated uses; (2) agricultural nonpoint sources are the major nutrient sources in lakes with eutrophication problems; and (3) of the 20 States which specifically quantified their progress towards the 1983 Clean Water Act goals, 15 (75 percent) list nonpoint sources as significant sources in their remaining problem waters.

Attainment and maintenance of water quality standards is our fundamental objective under the Clean Water Act. We all recognize that achieving this depends on controlling both point and nonpoint sources. My concern is that while tremendous public and private investments have been made to control point sources, we have thus far been remiss in addressing the continuing problem of nonpoint source pollution. This condition is of major importance both because it affects the total amount of pollution control achieved and because it dilutes and dissipates the environmental return on the time, resources, and effort we have already expended.

Just as there is general agreement about the significance of nonpoint source pollution control problems, there is basic consensus on what needs to be done. Each State must identify specific problem waterbodies and contributing nonpoint sources, develop tailored controls, and proceed with implementation. To date, most States have generally identified their nonpoint source problem waters, the nonpoint sources affecting these waters, and proposed control approaches. Much of this was accomplished as part of the broader 208 planning effort. In some cases, there may be a need to go beyond this initial planning and identify specific problem activities and appropriate site-specific controls. Once the site-specific control approaches are identified, the crucial next step will be to ensure that the parties responsible put those controls into practice.

My discussion on nonpoint sources indicates two basic areas of agreement on implementing the necessary controls. One area of agreement is that State and local governments have the major planning, program development, and implementation responsibilities. They unquestionably have a broader range of authorities and more detailed knowledge of site-specific conditions than we have at the Federal level. Therefore, they are able to tailor nonpoint source control programs to meet their specific needs.

The other area of agreement is that, while States must have the primary responsibility for nonpoint source program development and implementation, the Federal Government will reemphasize its efforts to address this problem. The Agency also has the responsibility to provide technical expertise and disseminate knowledge gained at the Federal, State, and local level to other communities with similar problems.

I believe that a number of steps can be taken now to ensure that the Federal Government effectively meets its responsibilities in this area. First, under existing Clean Water Act authorities, EPA will provide clear guidance under which States will update or develop nonpoint source programs for specific waterbodies where nonpoint sources substantially impact desired water uses. States can use or refine existing water quality management plans to accomplish this.

Second, Secretary of Agriculture Block and I have discussed how we can best coordinate our efforts to address priority nonpoint source control needs in each State. We have agreed that after EPA issues its nonpoint source guidance, USDA will support EPA's priority on this subject as part of their ongoing National Conservation program. USDA's technical assistance delivery systems can help many farmers in this country to understand the impact their activities can have on water quality, and how they can modify their own farming practices to protect water quality.

USDA has a long and successful history of working at the grass roots level to develop conservation practices, to educate the farmers on these practices and to provide technical assistance in applying them. At the county level, the Agricultural Stabilization and Conservation Service, the Soil Conservation Service, and the Extension Service all work together to provide support and assistance to farmers needing or requesting help.

EPA will continue to encourage States to use funds available under Section 205(j) and 106 of the Act for nonpoint source needs and provide Agency technical and program support. In addition, EPA will use $2 million in appropriated fiscal year 1984 extramural funds for a nonpoint source report to Congress, development and dissemination of information on control strategies, and technical transfer on NPS methodologies. EPA will maintain Headquarters and EPA Regional Office personnel to support State and local government nonpoint source control efforts in fiscal year 1984. Finally, the Agency, together with other federal agencies, will be working to examine their fiscal year 1985 needs.

I believe H.R. 4037 and EPA's strategy for nonpoint source pollution control are basically consistent in terms of the need to identify specific problem areas and control needs. However, I am concerned that a Federal cost-sharing program would create disincentives to voluntary action by anyone not receiving Federal funds and therefore would slow the implementation of nonpoint source controls. I believe the federal role should not infringe on sensitive State and local decisions concerning land use. I was pleased to note that the recent Senate committee modifications to their nonpoint source control provision include elimination of the disincentives to voluntary action.

## 7. ENFORCEMENT

The Clean Water Act will not work unless EPA and State enforcement efforts are vigorous and effective. Toward that end, there are two provisions of the administration's proposal that I would like to emphasize this morning: administrative civil penalties and criminal sanctions.

### *a. Civil enforcement*

Presently the Clean Water Act provides two civil enforcement options. When faced with a violation of the act, the Administrator may issue an order requiring compliance by the violator or the Administrator may bring a civil action in the appropriate United States District Court for penalties and injunctive relief.

Section 7 of the Administration's proposed legislation allows the Administrator a third option, to administratively assess civil penalties of up to $10,000 per day (not to exceed $75,000 total) for clear and well documented violations of the Act. Under this approach, a violator would be given notice and an opportunity for a hearing, and if dissatisfied with the final assessment, he would be able to seek review in a United States District Court. The court review would be appellate in nature and not a de novo trial proceeding.

The addition of administratively assessed civil penalties as an enforcement tool would give the Agency more flexibility to deal with noncompliance situations. A non-penalty administrative order may be ineffective in resolving the problems, and yet the option of taking judicial action may be unreasonably costly, burdensome, and time consuming for all the parties involved, given the nature of the violation.

The Agency's experience to date with assessing similar civil penalties existing under other environmental statutes (CAA, FIFRA, TSCA, RCRA) indicates that this option will give EPA more enforcement flexibility, lead to speedier compliance, and assure due process without the expense and delay of a judicial enforcement action.

Section 8 of H.R. 3282 addresses the area of civil enforcement as well. It proposes to increase the daily maximum civil penalty provided for under section 309(d) of the Clean Water Act from $10,000 per day to $20,000 per day. Although this is slightly less than the equivalent provisions of the Clean Air Act and the Resource Conservation and Recovery Act, it strengthens existing enforcement mechanisms, and, therefore, I support it. I would also support increasing the maximum civil penalty to $25,000 per day so as to be fully consistent with the provisions of these other statutes.

### *b. Criminal enforcement*

Knowing violations of the Clean Water Act have caused serious environmental harm and millions of dollars of damage to private and public property. In some cases, they have raised the clear potential for loss of life and serious personal injury. A stronger criminal sanction is needed under the Act to deter these violations.

The proposal we are recommending elevates penalties for knowing violations of the Act to the felony level and adds criminal sanctions to the Act for persons who knowingly introduce into a sewer system a pollutant or hazardous substance which causes or can reasonably be anticipated to cause personal injury or property damage. For those defendants who have complied with all applicable Federal, State and local requirements, an affirmative defense is provided.

The addition of these criminal penalties to the Act will put violations on the same level as violations under RCRA. Currently, a knowing discharge onto the ground of harzardous wastes could subject the discharger to felony sanctions under RCRA.

However, the same discharge into a sewer system would only subject the discharger to the misdemeanor provisions of the Clean Water Act. The result is an unintentional incentive to dump hazardous substances into sewer systems. The addition of these criminal sanctions will aid in protecting sewer system and POTWs in which substantial Federal monies are invested.

Strong public support exists for aggressive enforcement action in cases of deliberate environmental misconduct. The addition of criminal sanctions to the Act for knowing, intentional violations of the Act will reflect this public concern and should dispel any perceptions that the intentional violation of the Act is not a serious offense.

### 8. CONCLUSION

In conclusion, Mr. Chairman, I have focused my remarks on what I believe are the key reauthorization issues. I have not discussed a number of other issues raised in both the Administration's and other proposals before this Subcommittee. Clearly, these need to be addressed in this reauthorization process. I hope that today we have begun what will be a continuing dialogue to address these remaining issues as well as the ones I have highlighted this morning.

This concludes may prepared statement. I would be happy to answer any questions you may have.

### SUMMARY OF ADMINISTRATION PROPOSALS FOR CLEAN WATER ACT REAUTHORIZATION

1. *Authorization* [sections 104(u), 106(a) and 517] 5 year reauthorization of funding to 1988.
2. *BAT/BAT compliance deadline extension.*—[sections 301 (b)(2) and (k)] Extend Section BAT/BCT compliance deadlines from July 1, 1984 to not later than July 1, 1988.
3. *Municipal deadline extension.*—[section 301(i)] Allow all POTWs not in compliance with secondary treatment or water quality standards to apply for an extension to 1988.
4. *Environmental modification fees.*—[section 301(n)—new subsection] Allow Administrator authority to charge fees for waiver or exemption processing.
5. *New source performance standards.*—[section 306(a)] Make new source performance standards applicable only after *final* regulations are issued (instead of proposed).
6. *Pretreatment.*—[section 307(e)—new subsection] Allow local POTW's to apply on behalf of indirect dischargers for modification of categorical pretreatment standards.
7. *Administrative civil penalties.*—[section 307(g)—new subsection] Allow Administrator authority to *administratively* assess civil penalties for clear, well-documented violations of the Act—analogous to parking ticket concept. Appeal to district court provided.
8. *Criminal sanctions.*—[section 309(c)] Modify enforcement provisions of section 309—(penalties of up to $50,000/day and/or 2 years imprisonment—basically to parallel RCRA.)
9. *Thermal dischargers.*—[section 316(a), (b), and (c)] Base modification of technology-based thermal standards on either 1) protection of balanced population of aquatic life ("indigenous" deleted) or 2) attainment of State thermal water quality criteria. Allow alternative measures to mitigate the impacts of cooling water intake structures.
10. *NPDES permit term extension.*—[section 402(b)] Extend NPDES permit life from 5 to 10 years for permits with no modifications.
11. *Partial NPDES program approval.*—[section 402(b) and (c)] Allow State administration of selected parts of permit program.
12. *Munitions.*—[section 502(6)] Exclude conventional munitions from Act's definition of "pollutant."
13. *Criminal investigations.*—[section 501(g)—new subsection] Provide confirmation of EPA's criminal investigative authority.
14. *Fundamentally different factor determination.*—[section 301(l)] Confirm the Administrator's authority to determine alternative effluent limitations for an existing direct or indirect discharger which is fundamentally different from those dischargers considered in developing national effluent guidelines.
15. *Conflict of interest.*—[section 304(i)] Modify the conflict of interest requirements applicable to state permitting bodies to generally parallel those of the Clean Air Act.

16. *Report to Congress.*—[section 6 of FWPCA of 1972] Repeal requirement for the Secretary of Commerce to submit to Congress an annual report on the international trade effects of water pollution control expenditures.

17. *Commonwealth of the Northern Mariana Islands.*—[section 502(3)] Modify the definition of "State" to include the Commonwealth of the Northern Mariana Islands.

## SECTION-BY-SECTION ANALYSIS

### AUTHORIZATION

*Section 1* of the bill amends sections 104(u), 106(a) and 517 to extend funding authority for 5 years, through fiscal year 1988. Funding for fiscal year 1984 is based on the President's budget, and for subsequent years such sums as may be necessary are authorized. A technical amendment has also been made to section 517 to authorize funds for section 304 information and guidelines.

These funds will support the development of information on pollution prevention, reduction and elimination through a program of research, investigation and demonstration (section 104(u)); grants for State and interstate agency pollution control programs (section 106(a)); and the general implementation of the Act (section 517).

### BAT/BCT COMPLIANCE DEADLINE EXTENSION

*Section 2* of the bill amends section 301 of the Act to extend the current deadline for industrial compliance with BAT and BCT effluent guidelines from July 1, 1984, to July 1, 1988; and for industrial BAT/BCT permit limitations based on best professional judgment (BPJ), to provide three years from date of issuance in which to achieve compliance. This section also continues the present 3 year deadline extension for dischargers using innovative technologies to achieve compliance with BAT.

Delays experienced by the Agency in promulgating BAT/BCT effluent guidelines leave very little lead time for industry to meet present compliance deadlines. The purpose of this revision, therefore, is to provide industry with sufficient time to construct the necessary treatment facilities to come into compliance with BCT and BAT effluent guidelines.

### MUNICIPAL DEADLINE EXTENSION

*Section 3* amends section 301 of the Act to allow all publicly owned treatment works (POTW's) not in compliance with applicable secondary treatment or water quality based effluent limitations to apply for an extension to 1988.

In 1977, extensions of compliance deadlines under the Act were authorized to no later than 1983. In the recent 1981 municipal construction grant amendments (P.L. 97-117), the extension date was changed to 1988, but only POTW's that already had extensions were eligible. The purpose of this revision is to allow all POTW's not in compliance the opportunity to apply for that extension. To receive an extension a POTW must meet the same tests and conditions set forth under the 1977 Act.

### ENVIRONMENTAL MODIFICATION FEES

*Section 4* adds a new subsection to section 301 of the Act. This subsection provides the Administrator with the authority to charge fees for processing and reviewing applications to modify or exempt certain effluent limitations, standards, and requirements under sections 301 (c), (g), (h), 307(b), and 316(a) of the Act. Under this revision, fees collected by EPA would be used solely for the purposes of processing and reviewing such applications.

### NEW SOURCE PERFORMANCE STANDARDS

*Section 5* amends section 306 to redefine "new source" to make new source performance standards (NSPS) applicable after issuance of final rather than proposed regulations.

Presently, facilities may be considered to be new sources if construction is begun after issuance of proposed new source performance standards. The difficulty with this definition is that in practice, it may take over a year between the issuance of a proposed regulation and the promulgation of final binding standards. The purpose of this revision is to ensure that final NSPS standards will be available and applicable as new construction is begun.

### PRETREATMENT

*Section 6* amends section 307 to allow modification of certain categorical pretreatment requirements for industrial facilities discharging into a POTW if it can be demonstrated to the satisfaction of the Administrator and the State that the modification will not interfere with meeting the State designated uses for the receiving water body.

For an industrial facility to receive a modification, the POTW must apply on its behalf. The POTW must have an approved general pretreatment program and show that it is either achieving secondary treatment or on a compliance schedule to achieve it. Among other things, the POTW must also develop for itself end-of-pipe numerical effluent limitations for each of the pollutants that would otherwise be limited by the categorical standard. These end-of-pipe limitations must be adequate to ensure that attainment of local water quality objectives will not be interfered with. In addition, a monitoring program must be in place to ensure that these limitations in fact will not be exceeded.

### ADMINISTRATIVE CIVIL PENALTIES

*Section 7* amends section 309 of this Act to provide the Administrator with authority to administratively assess civil penalties of up to $10,000/day for clear and well-documented violations of the Clean Water Act which may not be serious enough to require judicial enforcement.

Presently, civil penalties under the Act can only be imposed through judicial enforcement. By providing authority for administrative penalty assessment and resolution of actual issues before a neutral hearing officer, this revision will allow institution of an enforcement mechanism which would minimize protracted litigation while ensuring due process and resolving issues to the satisfaction of all parties more efficiently and expeditiously.

### CRIMINAL SANCTIONS

*Section 8* amends section 309 to provide that dischargers or individuals who knowingly violate or cause the violation of certain Clean Water Act requirements would be subject to criminal penalties of up to $50,000/day and/or imprisonment for up to 2 years. Existing misdemeanor penalties would be retained to address those violations which do not merit extraordinary punishment.

Presently the Clean Water Act has no provision that deals with knowing violations of major statutory or regulatory requiremments. This provision is intended to address intentional violations of the Act occurring on a regular basis over an extended period of time that result in significant harm to public health or the environment and provide for the imposition of correspondingly stiffer penalties for such actions. This provision is not directed or intended to apply to isolated instances of either unpermitted discharges or discharges exceeding permit limitations.

### THERMAL DISCHARGES

*Section 9* amends section 316 to modify the environmental tests for thermal discharge modifications from a test based on balanced, indigenous population to either the attainment and maintenance of thermal water quality criteria or a test based on a balanced population of shellfish, fish, and wildlife. Such modifications would be conditioned on the establishment of a monitoring program to ensure compliance.

The present provision may require protection for uses which do not exist in the receiving waters of the discharger and which may exceed existing State standards.

Section 316 is also amended to allow the use of alternative measures, such as construction and operation of a fish hatchery restocking program, to mitigate the adverse environmental effects of intake structures if the alternative measures are equal in effect to the Best Technology Available for intake structures.

### NPDES PERMIT TERM EXTENSION

*Section 10* amends section 402 of the Act to extend the present NPDES permit term under the Act from 5 to no more than 10 years for permits with no modifications.

For the State and Federal agencies assigned the responsibility for issuing discharge permits, the extension of the permit term will reduce the annual permitting workload and serve as a management tool to ensure that large backlogs do not accumulate in the future. For the permittee, the longer term should generally provide more certainty over the longer period of time, thereby making investments in pollution control more economical.

### PARTIAL NPDES PROGRAM APPROVAL

*Section 11* amends section 402 to allow EPA to approve partial State administration of permit programs. Currently, States wishing to administer the NPDES Program must assume all major components of the program before EPA is authorized to approve State assumption.

Allowing partial program approvals would provide the States flexibility in seeking approval for those parts of the program which they can administer immediately. While a State with a fully approved program could return the entire program to EPA, it could not return any part or parts.

### MUNITIONS

*Section 12* amends section 502 to exclude munitions used in the course of conventional military weapons training and testing from the definition of pollutants controlled under the Act. The purpose of this revision is to permit the military to conduct training activities without the necessity of obtaining an NPDES permit for the intentional or accidental discharge of projectiles into waters near or surrounding targets.

### CRIMINAL INVESTIGATIONS

*Section 13* amends section 501 of the Act to affirm the existing authority of EPA to investigate and refer cases under the criminal provisions of the statute. The need for this provision arises from the absence of specific statutory language pertaining to criminal investigative jurisdiction under the Act.

In January 1981, as a result of specific challenges to the Agency's independent authority to conduct criminal investigation, Attorney General Civiletti issued a confirmation of criminal investigative jurisdiction in a letter to the Administrator of EPA. Litigants continue to resist, however, due to the absence of specific statutory language confirming this authority.

Enactment of section 13 will confirm and clarify the Agency's authority to initiate and conduct investigations of potential criminal violations of the Clean Water Act and to refer the results of these investigations to the Attorney General for prosecution.

### FUNDAMENTALLY DIFFERENT FACTORS DETERMINATION

*Section 14* amends section 301(l) of the act to confirm the agency's authority to adopt an administrative procedure which may be used to determine alternative technology-based effluent limitations and standards for existing direct and indirect discharges which are fundamentally different from dischargers considered in the development of national effluent guidelines. EPA has traditionally relied on the fundamentally different factors (FDF) determination procedure as a "safety valve" in developing, implementing and defending effluent guidelines and standards for existing sources. The FDF determination procedure has permitted EPA to focus its data gathering and analysis during the national rulemaking on the more typical facilities and defer to subsequent proceedings those plants with unique features.

### CONFLICT OF INTEREST

*Section 15* amends section 304(i) of the Act to modify the conflict of interest requirements applicable to state permitting boards along the lines of the Clean Air Act. This provision would eliminate the current prohibition on state permitting boards employing any person who receives, or has received during the previous two years, a significant portion of his income directly or indirectly from permit holders or applicants for a permit. It would also require state permitting boards to have at least a majority of members who represent the public interest and for any potential conflicts of interest to be adequately disclosed.

### REPORT TO CONGRESS

*Section 16* repeals section 6 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 nt.) which requires the Secretary of Commerce to report annually to Congress on the international trade impacts of water pollution control expenditures. The Department of Commerce has found it extremely difficult, and often impossible, to obtain from foreign countries the detailed data needed to prepare the reports. Only the 1976 and 1979 reports have included cost data from foreign countries, and then only for three industries. Accordingly, the reports have not been very useful and do not justify their costs.

### COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

*Section 17* amends the definition of "State" to include the Commonwealth of the Northern Mariana Islands. Since the Act was last reauthorized in 1977, a portion of the Trust Territory of the Pacific Islands has been redesignated as the Commonwealth of the Northern Mariana Islands. Expansion of the term "state" to include them would conform the Act to reflect their new status.

### AUTHORIZATION

*Sec. 1.* (a) Section 104(u)(1) is amended by deleting the word "and" following "1981," and by inserting "not to exceed $12,533,600 for the fiscal year ending September 30, 1984, and such sums as may be necessary for the fiscal years ending September 30, 1985, September 30, 1986, September 30, 1987, and September 30, 1988" immediately following "1982".

(b) Section 106(a) is amended by deleting the word "and" following "1973", by inserting "; and" immediately following "1982", and by adding a new paragraph (3) as follows:

"$24,000,000 for the fiscal year 1984, and such sums as may be necessary for the fiscal years 1985, 1986, 1987 and 1988".

(c) Section 517 is amended by striking "and" immediately following "1981," and by inserting ", $91,589,300 for the fiscal year 1984 and such sums as may be necessary for the fiscal years 1985, 1986, 1987, and 1988" immediately before the period at the end thereof.

(d) Section 517 is further amended by inserting "304(k)" in place of "304".

### BAT/BCT COMPLIANCE DEADLINE EXTENSION

*Sec. 2.* (a) Section 301(b)(2)(C) is amended to read as follows: "With respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives, compliance with those effluent limitations established in regulations issued under sections 301(b)(2) and 304(b)(2) of this Act no later than July 1, 1988, and for all other limitations established to carry out the provisions of this subparagraph compliance no later than 3 years after the date such limitations are established;".

(b) Section 301(b)(2)(E) is amended to read as follows: "With respect to pollutants identified pursuant to section 304(a)(4) of this Act for categories and classes of point sources, other than publicly owned treatment works, compliance with those effluent limitations established in regulations issued under sections 301(b)(2)(E) and 304(b)(4) of this Act no later than July 1, 1988, and for all other limitations established to carry out the provisions of this subparagraph compliance no later than 3 years after the date such limitations are established;".

(c) Section 301(b)(2)(F) is amended to read as follows: "For all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with those effluent limitations established in regulations issued under sections 301(b)(2) and 304(b)(2) of this Act no later than July 1, 1988, and for all other limitations established to carry out the provisions of this subparagraph compliance no later than 3 years after the date such limitations are established.".

(d)(1) Section 301(k) is amended by deleting the words "July 1, 1987," and inserting in lieu thereof the words "July 1, 1991,".

(2) Section 301(k) is further amended by deleting the letter "(A)" from "(b)(2)(A)" wherever it appears.

### MUNICIPAL DEADLINE

*Sec. 3.* Section 301(i)(1) is amended by deleting the words "within 180 days after the date of enactment of this subsection" and inserting in lieu thereof the following: "within 12 months after enactment of the Clean Water Act Amendments of 1983.".

### ENVIRONMENTAL MODIFICATION FEES

*Sec. 4.* Section 301 is amended by adding a new subsection (n) as follows:

"The Administrator may prescribe such processing fees for applications for modifications and exemptions submitted to the Administrator pursuant to sections 301(c), (g), (h), (m), 307(e), and 316(a) of this Act as he deems appropriate. All amounts collected by the Administrator under this subsection shall be used solely for application processing purposes; provided that these amounts shall be credited to the appropriation that incurs the costs and shall be available only in such amounts as are included in appropriations acts.".

### NEW SOURCE PERFORMANCE STANDARDS

*Sec. 5.* Section 306(a)(2) is amended by adding a sentence at the end thereof to read as follows:

"For the purposes of any regulation proposed after the date of enactment of the Clean Water Act Amendments of 1983, the term "new source" shall mean any source, the construction of which is commenced after the publication of final regulations prescribing a standard of performance under this section which is applicable to such source.".

### PRETREATMENT

*Sec. 6.* (a) Section 307 is amended by adding a new subsection (e) as follows:

"(1) The Administrator, with the concurrence of the State (or, if appropriate, the State), may issue a permit under section 402 for a treatment works (as defined in section 212 of this Act) which is publicly owned, which modifies applicable industrial categorical standards established under sections 307(b)(1) and (c) of this Act for industrial sources introducing pollutants into such works upon a showing, satisfactory to the Administrator (or, if appropriate, the State) that—

(A) the treatment works is in compliance with the requirements of section 402(b)(8) of this Act;

(B) the treatment works is in compliance or subject to a schedule for achieving compliance with effluent limitations based upon secondary treatment (as defined pursuant to section 304(d)(1) of this Act or as may be modified pursuant to section 301(h) of this Act) and with the requirements of section 403 of this Act;

(C) there are applicable numerical effluent limitations for the treatment works specific to the pollutants for which the modification is requested to ensure that such pollutants do not pass through the treatment works in quantities sufficient to interfere with the attainment or maintenance of the designated uses (established pursuant to section 303(c) of this Act) of the body of water into which such works discharge, and that the works is in compliance or subject to a schedule for achieving compliance with such limitations as expeditiously as possible and with the requirements of section 403 of this Act;

(D) such modification will not result in any pollutant interfering with the operation of such works or impairing current or planned future sludge use or disposal by such works;

(E) there exists adequate legal, financial, technical, analytical, administrative, and enforcement authority, as well as resources and a system of enforceable limitations to ensure compliance with the requirements of this subsection;

(F) a monitoring program will be established in accordance with section 402 of this Act to ensure continued compliance with the requirements of this subsection; and

(G) an annual report will be submitted to the Administrator (or, if appropriate, the State) to document continued compliance with the requirements of this subsection.

(2) Upon a finding that any of the applicable requirements of this subsection are not being met by the treatment works to which a modified permit was granted, and after notice and consultation with State and local authorities (or, if appropriate, the Administrator), the Administrator (or, if appropriate, the State) shall modify or rescind such modification, and may establish such effluent limitations for the treatment works as may be necessary to achieve the purposes of subsections (b) and (c) of this section.

(3)(A) Any application for a modification filed by a treatment works under this subsection shall not operate to stay any requirement of subsection (b) or (c) of this section unless such works submits a letter of intent to the Administrator (or, if appropriate, the State) within 120 days of the promulgation date of the industrial categorical standard for which the modification is requested, or within 120 days of the date of enactment of this bill if the applicable standards was promulgated prior to such date.

(B) The letter of intent shall include, but not be limited to, a demonstration satisfactory to the Administrator (or, if appropriate, the State) that (i) the treatment works is in compliance with the requirements of section 402(b)(8) of this Act or with effluent limitations based upon secondary treatment (as defined pursuant to section 304(d)(1) of this Act or as may be modified under section 301(h) of this Act), and (ii) both an achievable schedule containing planning, development, and performance dates by which all the requirements of paragraph (1) will be met, and a workplan specifying the scientific, technological, and administrative methodologies to be relied on in meeting the schedule have been established.

(C) Upon receipt of a satisfactory letter of intent, the Administrator (or, if appropriate, the State) may stay the applicable requirements of a categorical standard for which a modification is requested for an industrial source introducing pollutants into the treatment works for no more than two years from the date such letter of intent is received.

(D) The Administrator (or, if appropriate, the State) shall revoke any stay granted under this subsection upon a finding that the dates of the schedule or methodologies of the workplan contained in the letter of intent under subparagraph (B) have been significantly delayed or varied.".

(b) Section 402 is amended by adding a new subsection (m) as follows: "In issuing a permit under this section, the Administrator shall not require pretreatment by dischargers of conventional pollutants identified pursuant to section 304(b)(4) of this Act in compliance with all applicable requirements of local pretreatment programs approved under subsection (b)(8) of this section as a substitute for municipal treatment adequate to meet the requirements of a permit issued under this section for a treatment works (as defined in section 212 of this Act) which is publicly owned. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit issued under this section.".

### ADMINISTRATIVE CIVIL PENALTY AUTHORITY

*Sec. 7.* Section 309 is amended by adding a new subsection (g) as follows:

"(1) In addition to any other relief provided, whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 301, 302, 306, 307, 308, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by him or by a State, or in a permit issued under section 404 of this Act by a State, he may after consultation with the State in which the violation occurs assess a civil penalty of not than $10,000 per day of violation not to exceed $75,000 in total.

(2) In assessing such penalty, the Administrator shall provide the person in violation with notice and opportunity for a hearing which shall not be subject to the requirements of section 554 or 556 of the Administrative Procedure Act.

(3) In determining the amount of penalty to be assessed, the Administrator shall take into account the nature, circumstances, extent and gravity of the violations, and with respect to the violator, ability to pay, effect on ability to continue in business, any prior history of such violations, the degree of culpability, economic savings, if any, resulting from the violation and such other matters as justice may require.

(4) If any person fails to pay a civil penalty assessed in accordance with paragraphs (1), (2), and (3), the Administrator may request the Attorney General to collect the amount assessed plus interest in an action brought in any appropriate district court in the United State.

(5) Any person aggrieved by a final assessment of the Administrator and who has requested a hearing under paragraph (2) may seek review in the appropriate district court of the United States only by filing an action within 30 days of the date of that assessment.

(6) The Administrator shall have the authority to issue subpoenas ad testificandum and subpoenas duces tecum in connection with hearings under subsection 309(g)(2) of this Act and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions and attorneys fees for failure to comply.

(7) Action taken by the Administrator pursuant to this subsection shall not affect or limit the Administrator's authority to enforce any provision of this Act, provided however, that the discharge of pollutants which is penalized administratively under

this subsection shall not be the subject of a civil penalty under section 309(d) or section 311(b) of this Act.".

### CRIMINAL SANCTIONS

*Sec. 8.* Section 309(c) is amended as follows:

"(1) Any person who (A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under Section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) negligently introduces into a sewer system or into publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personel injury or property damage, or causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both.

(2) Any person who (A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage, or causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(3) It shall be an affirmative defense under subsections (c)(1)(B) and (c)(2)(B) of this section that such discharge or introduction was in compliance with all applicable Federal, State, and local requirements which govern the discharge or introduction of a pollutant or hazardous substance into a sewer, or publicly owned treatment works.

(4) Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.

(5) If a conviction is for a violation of paragraph (1), (2), or (4) of this subsection committed after a first conviction of such person under the paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(6) For the purpose of paragraphs (1), (2), and (4), the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

(7) For the purpose of paragraphs (1), (2), and (3), the term "hazardous substance" shall mean (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".

### THERMAL DISCHARGES

*Sec. 9.* (a) Section 316(a) is amended as follows:

"The Administrator (or, if appropriate, the State) may issue a permit under section 402 of this Act which modifies the requirements of sections 301 or 306 of this Act with respect to any effluent limitation proposed for the control of the thermal component of any discharge from a point source, upon a showing by the applicant satisfactory to the Administrator (or, if appropriate, the State) that such modified limitation will assure (1) the attainment and maintenance of thermal water quality criteria adopted under section 303 and compliance with the requirements of section 403 of this Act, or (2) the protection and propagation of a balanced population of shellfish, fish, and wildlife in and on that body of water as determined by the State (or, if appropriate, the Administrator). Before the Administrator (or, if appropriate, the State) may impose such a modified limitation, the applicant must also show that a monitoring program will be established in accordance with section 402 of this Act to ensure continued compliance with the requirements of this subsection."

(b) Section 316(b) is amended as follows:

"Any standard established pursuant to section 301 of this Act and appliccable to a point source shall require (1) that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impacts, or (2) that other equally effective measures be applied either alone, or in combination with best technology available, to minimize adverse environmental impacts. Any standard established pursuant to section 306 of this Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impacts."

(c) Section 316(c) is amended as follows:

"Notwithstanding any other provision of this Act, any point source of a discharge having a thermal component, the modification of which point source is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which, as modified, meets (i) effluent limitations established under section 301, or, if more stringent, effluent limitations established under section 303 or (ii) the requirements of paragraphs (a) (1) or (2) of this section, shall not be subject to any more stringent effluent limitation with respect to the thermal component of its discharge during a ten year period beginning on the date of completion of such modification or during the period of depreciation or amortization of such facility for the purpose of section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first."

### NPDES PERMIT TERM EXTENSION

*Sec. 10.* Section 402(b)(1)(B) is amended as follows: "are for fixed terms not exceeding 10 years, except for permits which reflect modifications under section 301 (c), (g), (h), (m), or 307(e) of this Act which shall be for fixed terms not exceeding 5 years;".

### PARTIAL NPDES PROGRAM APPROVAL

*Sec. 11.* (a) Section 402(b) is amended by inserting the following after the first full sentence: "In the event the Governor submits a plan to administer part of a permit program, the Administrator may approve such submission upon a showing that the plan provides for administration of permit program components which represent a significant and identifiable part of the State program authorized by this section.".

(b) Section 402(c) is amended by deleting the words "as to those navigable waters" and inserting in lieu thereof the words "as to those activities and discharges".

(c) Section 402(c) is further amended by adding a new paragraph (4) as follows:

"In the event a determination is made (A) by a State to return administration of the program to the Administrator or (B) by the Administrator to withdraw approval pursuant to paragraph (3) of this subsection, return of administration or withdrawal of approval may only be made of the entire program currently being administered by the State."

### MUNITIONS

*Sec. 12.* Section 502(6) is amended by deleting the word "or" where it appears before the letter "(B)", and inserting a comma in place of the period, and adding the following to the end thereof:

"or (C) munitions expended in the course of conventional weapons testing or training exercises by the Armed Forces of the United States, or by its allies in joint training exercises.".

### CRIMINAL INVESTIGATIONS

*Sec. 13.* Section 501 is amended by adding a new subsection (g) as follows:

"In carrying out the provisions of this Act, the Administrator, and duly-designated agents and employees of the Environmental Protection Agency, are authorized to initiate and conduct investigations under the criminal provisions of the Act, and to refer the results of these investigations to the Attorney General for prosecution in the appropriate cases.".

### FUNDAMENTALLY DIFFERENT FACTORS DETERMINATION

*Sec. 14.* Section 301(l) is amended to read as follows:

"(l) The Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 307(a)(1) of this Act, except that the Administrator may modify such a requirement to the extent justified by the fact that a direct or indirect discharger is, in terms of the factors specified in Section 304(b), fundamentally different from the direct and indirect dischargers considered in developing applicable effluent limitations guidelines and pretreatment standards under this section and section 307(b).".

### CONFLICT OF INTEREST

*Sec. 15.* Section 304(i)(2)(D) is amended to read as follows:

"(D) funding, personnel qualifications, and manpower requirements (including a requirement that any board or body which approves permit applications or portions thereof shall have at least a majority of members who represent the public interest and do not derive a significant portion of their income directly or indirectly from permit holders or applicants for a permit. Any potential conflicts of interest by members of such a board or body must be adequately disclosed).".

### REPORT TO CONGRESS

*Sec. 16.* Section 6 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 nt.) is hereby repealed.

### COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

*Sec. 17.* Section 502(3) is amended to read as follows:

"(3) The term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.".

Mr. **Roe**. Please proceed.

## TESTIMONY OF HON. WILLIAM D. RUCKELSHAUS, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY JACK RAVAN, ASSISTANT ADMINISTRATOR FOR WATER; AND REBECCA HANMER, DEPUTY ASSISTANT ADMINISTRATOR FOR WATER

Mr. **Ruckelshaus**. Thank you very much, Mr. Chairman. Accompanying me is Jack Ravan, the new Assistant Administrator for the Office of Water; and Rebecca Hanmer, Acting Assistant Administrator for Water over the last several months, who is most knowledgeable about all the issues the committee is addressing.

Mr. **Roe**. Before you begin, let me defer to Mr. Stangeland.

Mr. **Stangeland**. Thank you, Mr. Chairman. I would just like to take a moment to welcome Mr. Ruckelshaus to this committee. We are all aware of the circumstances that have brought him back to the agency that in many ways he helped form. I can't imagine a better choice for this critical position.

The water, air, and hazardous waste issues confronting our Nation are very real. It is imperative that these issues be kept in a nonpartisan perspective. We should not play politics with the Nation's environment and public health. That is why Bill Ruckelshaus, with his experience and character, provides a very real opportunity to apply true expertise to meet the environmental needs of our Nation. I do not doubt for a minute the Administrator's knowledge of the existing clean water program and of needed improvements. His knowledge and assistance to the committee are invaluable as we review the law and consider amendments to the Clean Water Act.

Mr. ROE. The Chair recognizes the Administrator.

Mr. RUCKELSHAUS. Mr. Chairman, I have already introduced Mr. Ravan and Ms. Hanmer. As I suggested, over the last several months Rebecca Hanmer has really done an outstanding job for us as the Acting Assistant Administrator for the Office of Water. She has been very helpful in steering through the legislation to the point it currently is in the Senate.

I want to emphasize at the outset how important I think the work this committee is doing for the country and for the cause of clean water. In my Senate testimony back in June, we offered to help the Senate committee any way we could—give technical assistance with the staff and work closely with the committee in its efforts to develop sound amendments for the reauthorization of the Clean Water Act. We certainly make that same offer to this committee regardless of whether we ultimately agree or disagree on precisely what the wording or provisions ought to be in the law.

Certainly, all of the collective expertise and wisdom that the Agency has ought to be made available to the Congress. We certainly want to make that promise, and we want to cooperate in any way that we can.

I want to go through my statement, Mr. Chairman. It is lengthier than usual, but in light of the importance of the issues and their complexity, I want to make sure that I am on the record as clearly as possible as to what we think ought to be done.

Mr. ROE. I think it is important.

Mr. RUCKELSHAUS. The committee has already held extensive hearings on the Clean Water Act last year and the breadth and detail of those hearings was very impressive. Your 2,300-page report reflects the diligent efforts of both this subcommittee and its staff in considering midcourse modifications to what I think we all agree is a fundamentally sound piece of legislation.

I understand that the purpose of this series of hearings is to review the concerns and issues that have been raised in connection with reauthorization of the Clean Water Act. I think the most useful thing that I, as Administrator of the Environmental Protection Agency, can do, Mr. Chairman, is to define what I see as the significant problem areas, comment on some of the major proposals before this committee, and offer my own views as to what direction any midcourse corrections should take. As I said, I am prepared to provide whatever technical assistance and information you require in addressing the difficult issues facing this subcommittee.

The key issues have been clearly defined in the numerous bills, including H.R. 3282 which is presently before this subcommittee and the administration's proposals, a copy of which I have attached to my testimony. I am happy to say that in my own mind, there are some issues on which there is no question.

The Clean Water Act is working. The control strategy formulated by Congress in 1972 and refined in 1977 has proven effective and successful. I have had firsthand experience with the background and origins of this legislation and there simply is no doubt that we have seen impressive progress over the past decade. The act's strategic approach of requiring implementation of nationwide technology based effluent limitations followed by any additional, needed controls based on site-specific water quality concerns should be continued.

On other issues, our approach to the key questions has been significantly strengthened by the useful comments we have received from Congress and the public on our original proposals, and by the other proposals which have been introduced in both Houses of Congress. Over the past several months our analysis of the major issues has continued, and I think we now have a better sense of what is reasonable, workable, and will yield results.

Our analysis has also identified four additional issues which this committee may care to review. The most important of these, fundamentally different factors determinations, so-called FDF's, are addressed in this statement. The other three are attached as part of the administration proposals. Brief explanations and proposed language on all four of these issues have been added to the administration's proposals for the committee's consideration.

I hope that in discussing the major questions before us today, we can build on the reauthorization process begun last year and quickly complete the development of effective solutions to those problems.

Now, as to the construction grants funding issue, one issue raised in H.R. 3282 that was not addressed last year is the proposal for increased construction grants funding. Under your leadership, Mr. Chairman, redirection and reauthorization of the construction grants program was considered in great detail 2 years ago and is reflected in the 1981 amendments to the Clean Water Act. The administration continues to support the 1981 amendments and believes that the authorization levels set out in them are appropriate.

In 1985 Congress will have to determine whether the program should be continued or modified. After more than 25 years, I believe there should be a fundamental examination of whether the program should be targeted to small municipalities, modified to a loan program or turned over to the States under the administration's New Federalism concept. Critical to all of these considerations is the need to determine the most appropriate Federal role in obtaining expeditious compliance by municipal pollution control facilities with the enforceable requirements of the act.

EPA will be conducting a detailed study of issues related to the reauthorization of the construction grants program. We would be pleased to work with you as we complete the study.

Beyond the construction grants program, the key issues I would like to touch on today include industrial compliance deadlines, pretreatment, fundamentally different factors determinations, water quality standards, post-BAT controls, nonpoint source controls, and the enforcement of compliance deadlines.

Of all the issues, clearly the most urgent in this reauthorization process is the need to extend industrial compliance deadlines. Industrial facilities have less than a year to comply with the current July 1, 1984, deadline for achievement of best available technology and best conventional technology effluent limitations. In many cases they have not been issued permits upon which even to begin the compliance process due to delays in agency promulgation of national effluent guidelines. EPA is now in the final stages of completing those guidelines. But the fact remains that the necessary period for permit issuance and compliance that Congress envisioned in 1977 has been drastically reduced.

A number of different proposals have been made to extend industrial deadlines. These proposals differ in terms of the effluent standards to which they would apply and how much additional time they would provide. What each of these proposals clearly recognizes is the need to extend industrial compliance deadlines.

In resolving the question of extensions, Mr. Chairman, I believe there are three objectives that any solution must address. First, any extension must recognize the time necessary to promulgate effluent guidelines, issue permits, and for dischargers to come into compliance. Second, the extension must contain a final compliance date which applies to all BAT/BCT-related permits. Third, the language should provide clearly that if compliance can be achieved before the final date, then it must be.

One thing I am very concerned about after reviewing the various proposals is that any final compliance deadline must be realistic. A number of the legislative proposals do not provide adequate time for the regulatory agencies to translate the effluent guidelines into individual permits. The July 1, 1988, deadline contained in the administration proposal reflects, I believe, a realistic assessment of the time needed to complete issuance of the effluent guidelines, write implementing permits, and allow dischargers to come into compliance.

Let me emphasize, Mr. Chairman, that the administration's proposal would not allow any additional time for dischargers which could achieve compliance before July 1, 1988. Where compliance could be achieved before July 1, 1988, the implementing permits would contain the earlier deadline.

Finally, the administration proposal does continue the incentive for innovative solutions now embodied in section 301(k) of the act.

There is no question that some form of deadline extension is needed, Mr. Chairman, and I would like to offer whatever assistance the committee may require in determining the most appropriate way to address that need.

Pretreatment: The toughest issue with which I have dealt thus far in connection with Clean Water Act reauthorization is pretreatment. This is a subject to which EPA has devoted a substantial amount of time, resources, and effort. The fundamental objectives of this program under the act are to protect water quality, protect municipal sludge from contamination by industrial toxic wastes, and protect the operation of the POTW itself.

The need to achieve these goals is widely recognized and unquestioned. However, the best means of achieving them has been the subject of extensive debate since 1972. One of my principal concerns is that technology based categorical pretreatment standards inherently will result in cases of over or under treatment. There may be cases in which full implementation of categorical pretreatment standards may not be necessary or may not be sufficient to achieve the goals of the program.

The difficult question we all have been grappling with is how to address instances of potentially unnecessary treatment without opening a Pandora's box of technical difficulties, serious resource demands, administrative problems, and scientific uncertainties, and without delaying the program in those situations that need these controls.

With the gathering momentum of local pretreatment programs, and with the Agency's promulgation of categorical standards well underway, I am reluctant to recommend anything that will entail significant delay or loss of momentum. Of 1,700 POTW's required to develop local pretreatment programs, approximately 60 percent have now submitted some portion of the necessary elements for program approval. Of that group, roughly 370 have already received approval and are now ready to enforce categorical standards. Within this fiscal year, EPA and approved States are expected to approve an additional 800 local pretreatment programs. In addition, the compliance deadline for one of the major groups affected by categorical standards, the electroplaters, is now less than a year away.

At the same time, I also feel strongly that, where possible, we must avoid the application of categorical pretreatment standards where they are not needed. For this reason, I have pursued the concept of a pretreatment waiver. This is the reauthorization issue on which I have spent the most time over the last several months. I have talked with staff at all levels in the Agency and met with outside groups in an effort to develop a workable approach to this problem.

I must confess, Mr. Chairman, this has been a frustrating effort for me. As attractive as the concept of relying on end-of-pipe effluent limitations to insure protection of water quality seems, I have come to the difficult conclusion that it just is not feasible to administer such a program without a serious delay of 2 to 3 years in the program. The prerequisites of any successful national effort in this area are missing. Most States are only in the early stages of establishing specific ambient water quality criteria and permit effluent limitations for toxic substances. Furthermore, the national sludge disposal and use standards to be established by EPA are still several years away.

We could, of course, wait for the development of these effluent limitations and sludge standards, but I think the pretreatment program has now reached a stage where that would seriously jeopardize the progress that has been made to date. I think the Agency, indirect dischargers, and affected POTW's need to get on with implementing the program in a reasonable, rapid, and effective fashion.

Following my June 14 testimony before the Senate on this same subject, I directed my staff to go back and take a fresh look at the concerns of POTW's and municipalities and the problems associated with implementation of the existing program. After meeting with a number of groups to discuss operational concerns and explore alternatives, I have decided to establish a pretreatment implementation review task force. Its purpose will be to seek solutions to common implementation problems encountered by control and approval authorities. This will include developing equivalent industrial monitoring and municipal enforcement programs, and guidance on implementing production-based categorical standards and, where appropriate, to identify regulatory problems. To insure a broad base of information, the task force will be made up of representatives of States, municipalities, industry, the environmental community, and EPA. It will include representatives of both large and small municipalities, as well as municipalities with both new and established programs.

It is my hope that as the recommendations of this task force are factored into the implementation process, some of the most significant technical concerns and objections we have heard will be resolved.

Earlier I mentioned the lack of sludge disposal and use criteria. I am pleased to report that we have now established a program for moving aggressively forward in filling the regulatory gaps in that area. The Agency's sludge task force recently presented their findings to a senior-level policy committee. These included recommendations on how EPA should structure an integrated sludge regulatory program based upon the joint authority of section 405 of the act and the appropriate provisions of EPA's other laws. The committee has endorsed and forwarded those recommendations to me and has directed the task force to prepare a detailed work plan for initiating the effort.

Although many details remain to be worked out, the broad outline of this program involves a comprehensive effort to develop standards and to formulate a State implementation process. These regulations will be supplemented by a general policy statement and general guidance which we will issue this fiscal year. The regulation development effort will clearly take longer—probably in excess of 2 years—but resources within several key offices have already been redirected to support this undertaking. I am confident that this unified effort will produce a comprehensive sludge management program which will serve to insure safer, more cost-effective, and more beneficial sludge management, and which can be integrated into the existing pretreatment program.

In discussing pretreatment, I have emphasized the need to get on with implementation of the program. Of particular concern in this regard is a recent decision of the Third Circuit Court of Appeals as it relates to applying national effluent guidelines for indirect and, by implication, direct dischargers. Essentially, the court held that the fundamentally different factors determination procedure that EPA has had available for use in the application of national effluent guidelines for toxic pollutants is not authorized by the act.

I strongly believe, Mr. Chairman, that the FDF determination procedure is an essential adjunct to the national rulemaking process. EPA has traditionally used this procedure as a safety valve in developing, implementing, and defending effluent guidelines for existing sources. In going through the extraordinarily complex process of a national rulemaking, the FDF determination procedure permitted EPA to focus its data gathering and analysis on the more typical facilities and to defer to subsequent proceedings those plants with unique features.

This has resulted in both major cost savings and reductions in the time necessary for guideline development. By providing an administrative remedy for facilities that may not be able to meet national standards due to unique factors not considered in rulemaking, the FDF determination procedure reduces the legal vulnerability of the national standards.

There may be some concern that the administrative remedy provided by FDF determinations is somehow a regulatory loophole. This simply is not the case. It should be noted that the FDF determination procedure may be used to develop requirements more stringent than those contained in the national effluent guidelines.

Let me review very briefly how the FDF determination procedure works. A facility must first submit a petition demonstrating that there is some factor in its situation that is fundamentally different from those considered in establishing the national regulation. Only information not previously considered can be the basis for an FDF determination petition. In other words, this procedure cannot be used as a backdoor means of challenging and rearguing the regulation itself.

Second, to establish a fundamental difference, a facility must show that compliance with the national limits would result in either a removal cost wholly out of proportion to the removal cost considered by the Agency during the development of the national regulation or a fundamentally more adverse non-water-quality impact. This is a very tough test to meet.

Third, any alternative technology based limits may reflect only the degree of modification actually required by the fundamental difference.

Fourth, in order to insure that all points of view are considered, the public is informed of applications for FDF determinations and given the opportunity to participate in the proceeding.

The FDF determination procedure is not a waiver procedure, and, in particular, is not an economic waiver procedure. Rather it is a procedure through which a facility receives an individualized determination of its technology-based effluent requirements. As such, it is analogous to the Agency's use of best professional judgment permit determinations to establish effluent limitations for industrial facilities whose national effluent guidelines have not been issued.

My point is very simply, Mr. Chairman: There are two approaches for responding to a facility with valid grounds for arguing that it is fundamentally different from other facilities in its category. One possibility is to develop a separate subcategory within the regulation, undertake a separate data collection and analysis effort and then repropose and issue the final rule. The other alternative is to leave the national rule in place and use the FDF determination procedure to establish alternative technology-based limitations for the facility that accurately reflect its situation.

Let me emphasize that both of these approaches reflect the exercise of the Agency's regulatory expertise. Both of these approaches will involve a review of the same set of facts. Both involve the public. And both of these processes will end up with the same decision. So what is the difference?

Our major concern is that the subcategorization approach will add further complications and require potentially substantial additional time in developing what are already extraordinarily complex and detailed national regulations. In essence, this approach would require us to handle through modifications to nationally applicable regulations the special situations of single facilities. This simply is not efficient. By contrast, the FDF determination procedure allows both implementation of the national rule and consideration of individual petitions claiming unique factors.

For these reasons, I urge careful consideration of the attached draft language to clarify and confirm EPA's authority in this area.

With the completion of the remaining effluent guidelines over the next year and the implementation of pretreatment and direct discharge standards, a reasonable question remains: What if these technology-based limitations are not stringent enough to protect designated water uses? In accordance with the act's fundamental pollution control approach, reliance on strengthened and more sophisticated water quality standards will form the basis of EPA's post-BAT strategy.

Two issues come up in assessing any post-BAT strategy. The first is the adequacy of the water quality standards upon which control strategies will be based. The second is the strategy itself. Taking water quality standards first, I have read your letter of March 14, Mr. Chairman, and understand that one of the main reasons for the current widespread concern over these standards has been the Agency's October 1982 proposed rulemaking to revise the existing water quality standards regulation.

As I understand it, one of the principal purposes of this proposal was to make the standards-setting process a better and more effective decisionmaking tool. Regardless of the Agency's intent, the proposed revisions apparently were viewed by the public as a retreat from the goals and objective of the act in the areas of antidegradation, downgrading and cost-benefit analysis.

In response to numerous comments we have received on this issue, and the major concern indicated by both the House and Senate, we have recently made further revisions to and promulgated the Agency's water quality standards regulation. Copies of our redrafted preamble and regulatory provisions have been provided to this subcommittee for its information and use. I believe these additional revisions meet the concerns and objections that have been raised and both strengthen and clarify our national water quality standards program.

Section 6 of H.R. 3282 would address the issues of downgrading and antidegradation by codifying a revised version of the existing water quality standards regulation. Both of these provisions would hamper the ability of EPA and the States to deal with site-specific problems.

Since our revised regulation will yield the same environmental results, I strongly urge these provisions be deleted. Also, I would note that the Senate Committee on Environment and Public Works has agreed to delete the antidegradation and downgrading provisions in their bill.

H.R. 3282 would also add a provision requiring the use of numerical water quality criteria. This provision, requiring States to adopt numerical criteria for toxic pollutants, would essentially preclude States from using alternative means, such as biological criteria, of establishing water quality benchmarks. Under EPA's revised regulation, States must identify specific water bodies where toxic pollutants are causing problems, and must adopt criteria sufficient to protect the designated use. These criteria may be numerical or narrative and may be used singly or in combination, as needed.

For example, where an effluent contains a few, readily identifiable toxic chemicals, then pollutant-specific criteria and effluent limitations will be used. In situations involving discharges of complex effluents, it may neither be feasible nor environmentally protective to use a numerical, pollutant-by-pollutant approach. In those cases, I believe it is more effective to use biological testing as the basis for setting aquatic toxicity limits. Because our revised regulations provide a more effective, flexible approach which we have adequate authority to implement, I recommend that this provision be deleted, or at least modified to provide the flexibility to use either approach.

With respect to a post-BAT control strategy, H.R. 3282 would require EPA to inventory nonattainment waters existing after the installation of technology-based controls, and then develop and implement in cooperation with the States an individual point source control strategy for each nonattainment water body.

EPA has been studying the need for toxic pollutant controls beyond BAT for some time. The Agency has also been very hard at work developing the methods, especially biological assessments, necessary to determine where toxic pollutants are causing problems and to determine necessary levels of control. While much work remains to be done, I am confident that the Agency is in a position to make these methods generally available during this fiscal year.

Where EPA or a State determines that BAT is not sufficient to protect the designated uses of the receiving waters, it issues permits which include more stringent effluent limitations. Where the data are not available or not conclusive to support such a determination, the source's permit will be written to incorporate BAT effluent limitations but will contain monitoring requirements that become effective once the BAT effluent limits are achieved. If this monitoring shows that the BAT effluent limitations do not protect designated water body uses, the permit will be reopened and additional requirements incorporated. All of this is currently authorized by the existing statute.

So while I support establishing controls beyond BAT when necessary, I feel that the Agency already has the authority to accomplish this. And I believe, therefore, that statutory changes are neither necessary nor desirable. I would be happy to work with you and the committee in further explaining our concerns and reservations on this issue.

Next I would like to address the control of nonpoint sources of pollution. H.R. 4037 proposes a national program to assist State implementation of nonpoint source pollution controls. With the establishment of technology-based standards well underway for point sources, it is now time to turn our attention to the control of pollution from nonpoint sources. I believe there is no question that pollution from nonpoint sources is having significant adverse impacts on water quality in certain areas across the United States.

The 1982 State water quality assessments report prepared under section 305(b) of the act describes the nature of this problem: (1) in one-fifth of the States, nonpoint sources are now the most important cause of water degradation in those waters not meeting designated uses; (2) agricultural nonpoint sources are the major nutrient sources in lakes with eutrophication problems; and (3) of the 20 States which specifically quantified their progress toward the 1983 Clean Water Act goals, 15—or 75 percent—list nonpoint sources as significant sources in their remaining pollution problem waters.

Attainment and maintenance of water quality standards is our fundamental objective under the Clean Water Act. We all recognize that achieving this depends on controlling both point and nonpoint sources. My concern is that while tremendous public and private investments have been made to control point sources, we have thus far been remiss in addressing the continuing problem of nonpoint sources pollution. This condition is of major importance both because it affects the total amount of pollution control achieved and because it dilutes and dissipates the environmental return on the time, resources, and effort we have already expended.

Just as there is general agreement about the significance of nonpoint sources pollution control problems, there is a basic consensus on what needs to be done. Each State must identify specific problem water bodies and contributing nonpoint sources, develop tailored controls, and proceed with implementation. To date, most States have generally identified their nonpoint sources problem waters, the nonpoint source affecting those waters, and proposed control approaches.

Much of this was accomplished as part of the broader 208 planning effort. In some cases, there may be a need to go beyond this initial planning and identify specific problem activities and appropriate site-specific controls. Once the site-specific control approaches are identified, the crucial next step will be to insure that the parties responsible for those controls put them into practice.

My discussion on nonpoint sources indicates two basic areas of agreement on implementing the necessary controls. One area of agreement is that State and local governments have the major planning, program development, and implementation responsibilities. They unquestionably have a broader range of authorities and more detailed knowledge of site-specific conditions than we have at the Federal level. Therefore, they are able to tailor nonpoint source control programs to meet their specific needs.

The other area of agreement is that, while States must have the primary responsibility for nonpoint source program development and implementation, the Federal Government will reemphasize its efforts to address this problem. The Agency also has the responsibility to provide technical expertise and disseminate knowledge gained at the Federal, State, and local level to other communities, with similar problems.

I believe that a number of steps can be taken now to ensure that the Federal Government effectively meets its responsibilities in this area. First, under existing Clean Water Act authorities, EPA will provide clear guidance under which States will update or develop nonpoint source programs for specific water bodies where nonpoint sources substantially impact desired water uses. States can use or refine existing water quality management plans to accomplish this.

Second, Secretary of Agriculture Block and I have discussed how we can best coordinate our efforts to address priority nonpoint source control needs in each State. We have agreed that after EPA issues its nonpoint source guidance, USDA will support EPA's priority on this subject as part of their ongoing national conservation program. USDA's technical assistance delivery systems can help many farmers in this country to understand the impact their activities can have on water quality, and how they can modify their own farming practices to protect water quality.

USDA has a long and successful history of working at the grassroots level to develop conservation practices, to educate the farmers on these practices and to provide technical assistance in applying them. At the county level, the agricultural stabilization and conservation service, the soil conservation service, and the extension service all work together to provide support and assistance to farmers needing or requesting help.

EPA will continue to encourage States to use funds available under section 205(j) and 106 of the act for nonpoint source needs and provide Agency technical and program support. In addition, EPA will use $2 million in appropriated fiscal year 1984 extramural funds for a nonpoint source report to Congress, development and dissemination of information on control strategies, and technical transfer of NPS methodologies.

EPA will maintain headquarters and EPA regional office personnel to support State and local government nonpoint source control efforts in fiscal year 1984. Finally, the agency, together with other Federal agencies, will be working to examine their fiscal year 1985 needs.

I believe H.R. 4037 and EPA's strategy for nonpoint source pollution control are basically consistent in terms of the need to identify specific problem areas and control needs. However, I am concerned that a Federal cost-sharing program would create disincentives to voluntary action by anyone not receiving Federal funds and therefore would slow the implementation of nonpoint source controls.

I believe the Federal role should not infringe on sensitive State and local decisions concerning land use. I was pleased to note that the recent Senate Committee modifications to their nonpoint source control provision include elimination of the disincentives to voluntary action.

Enforcement: The Clean Water Act will not work unless EPA and State enforcement efforts are vigorous and effective. Toward that end, there are two provisions of the administration's proposal that I would like to emphasize this afternoon—administrative civil penalties and criminal sanctions.

Civil enforcement: Presently, the Clean Water Act provides two civil enforcement options. When faced with a violation of the act, the administrator may bring a civil action in the appropriate U.S. district court for penalties and injunctive relief.

Section 7 of the administration's proposed legislation allows the administrator a third option, to administratively assess civil penalties of up to $10,000 per day—not to exceed $75,000 total—for clear and well-documented violations of the act. Under this approach, a violator would be given notice and an opportunity for a hearing, and if dissatisfied with the final assessment, he would be able to seek review in a U.S. district court. The court review would be appellate in nature and not a de novo trial proceeding.

The addition of administratively assessed civil penalties as an enforcement tool would give the Agency more flexibility to deal with noncompliance situations. A nonpenalty administrative order may be ineffective in resolving the problems, and yet the option of taking judicial action may be unreasonably costly, burdensome, and time consuming for all the parties involved, given the nature of the violation.

The Agency's experience to date with assessing similar civil penalties existing under other environmental statutes—CAA, FIFRA, TSCA, RCRA—indicates that this option will give EPA more enforcement flexibility, lead to speedier compliance, and assure due process without the expense and delay of a judicial enforcement action.

Section 8 of H.R. 3282 addresses the area of civil enforcement as well. It proposes to increase the daily maximum civil penalty provided for under section 309(d) of the Clean Water Act from $10,000 per day to $20,000 per day. Although this is slightly less than the equivalent provisions of the Clean Air Act and the Resource Conservation and Recovery Act, it strengthens existing enforcement mechanisms, and, therefore, I support it.

I would even support a maximum civil penalty of $25,000 a day to make it consistent with these other statutes. As to the criminal enforcement, knowing violations of the Clean Water Act have caused serious environmental harm and millions of dollars of damage to private and public property. In some cases, they have raised the clear potential for loss of life and serious personal injury. A stronger criminal sanction is needed under the act to deter these violations.

The proposal we are recommending elevates penalties for knowing violations of the act to the felony level and adds criminal sanctions to the act for persons who knowingly introduce into a sewer system a pollutant or hazardous substance which causes or can reasonably be anticipated to cause personal injury or property damage. For those defendants who have complied with all applicable Federal, State, and local requirements, an affirmative defense is provided.

The addition of these criminal penalties to the act will put violations on the same level as violations under RCRA. Currently, a knowing discharge onto the ground of hazardous wastes could subject the discharger to felony sanctions under RCRA. However, the same discharge into a sewer system would only subject the discharger to the misdemeanor provisions of the Clean Water Act. The result is an unintentional incentive to dump hazardous substances into sewer systems. The addition of these criminal sanctions will aid in protecting sewer systems and POTW's in which substantial Federal moneys are invested.

Strong public support exists for aggressive enforcement action in cases of deliberate environmental misconduct. The addition of criminal sanctions to the act for knowing, intentional violations of the act will reflect this public concern and should dispel any perceptions that the intentional violation of the act is not a serious offense.

In conclusion, Mr. Chairman, I have focused my remarks on what I believe are the key reauthorization issues. I have not discussed a number of other issues raised in both the administration's and other proposals before this subcommittee. Clearly, these need to be addressed in this reauthorization process. I hope that today we have begun what will be a continuing dialog to address these remaining issues as well as the ones I have highlighted.

This concludes my prepared statement. I would be happy to answer any questions you may have.

Mr. ROE. I want to thank you, Mr. Administrator, for a concise and precise statement.

The gentleman from Minnesota.

Mr. STANGELAND. Thank you, Mr. Chairman.

I inadvertantly scheduled a meeting in my office for the hour of 2. I am going to have to ask to be excused. I will make every effort to be back to ask the Administrator some questions.

I want to compliment him on an excellent statement. If I do not arrive back, I would like to have permission to submit questions in writing.

Mr. ROE. Without objection, so ordered.

[Subsequent to the hearing, supplemental questions were submitted to Mr. Ruckelshaus by Representatives Stangeland, Oberstar, and Edgar. The questions and responses follow:]

U.S. ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF EXTERNAL AFFAIRS,
*Washington, D.C., February 17, 1984.*

Hon. ARLAN STANGELAND,
*House of Representatives,*
*Washington, D.C.*

DEAR MR. STANGELAND: Enclosed are the Environmental Protection Agency's responses to the questions you recently submitted to Administrator William D. Ruckelshaus following his testimony before the Subcommittee on Water Resources.

I apologize for the delay in getting our responses to you. If I can be of further assistance, please feel free to contact me.

Sincerely yours,

STEADMAN M. OVERMAN,
*Director, Office of Legislative Analysis.*

Enclosure.

*Question.* "On the top of page 2, and elsewhere in your statement, you discuss 'The Administration's Proposals'. During the 97th Congress, the Administration formally transmitted recommended Clean Water Act Amendments to the Congress. This year, no such formal transmittal has been made. In light of this situation, what is the official status of the proposals which you have attached to your testimony?"

Response. The attachment to my November 15, 1983 testimony before the Water Resources Subcommittee represents the Administration's 1983 recommendations for Clean Water Act Amendments.

*Question.* "The 1976 NRDC Consent Decree, later incorporated into the Clean Water Act, called for EPA promulgation of BAT regulations by 1980. The Decree was modified in 1979, extending the promulgation deadlines into 1980. Subsequent EPA motions to modify the Consent Decree have resulted, I believe, in a requirement for all BAT regulations covered by the Decree to be promulgated by the end of June of next year. What is the current status of this effort?"

Response. The current status of our effort to promulgate the effluent guidelines as covered by the modified Consent Decree (October 26, 1982; August 2, 1983; and January 6, 1984) is as follows: regulations for 20 industrial categories have been promul-

**gated; regulations for 8 other industrial categories have been proposed and remain to be promulgated; and regulations for 1 industrial category remain to be both proposed and promulgated/(See attached schedule). Regulations for 9 other industrial categories covered by the Consent Decree have been excluded from regulation under provisions in Paragraph 8 of the consent Decree/(See attached schedule).**

## STATUS OF THE RULEMAKING SCHEDULES

| | Proposal [1] | Promulgation [1] |
|---|---|---|
| 20 projects are promulgated: | | |
| Aluminum forming | November 1982 | September 1983 |
| Coal mining | December 1980 | September 1982 [2] |
| Coil coating (phase I) | December 1980 | November 1982 |
| Coil coating (phase II) | January 1983 | November 1983 |
| Copper forming | October 1982 | July 1983 |
| Electroplating (pretreatment) | January 1978 | August 1979 |
| Electrical/electronic components (phase I) | August 1982 | March 1983 |
| Electrical and electronic components (phase II) | February 1983 | November 1983 |
| Inorganic chemicals (phase I) | July 1980 | June 1982 |
| Iron and steel manufacture | December 1980 | May 1982 |
| Leather tanning and finishing | June 1979 | November 1982 |
| Metal finishing | August 1982 | June 1983 |
| Ore mining | May 1982 | November 1982 [2] |
| Petroleum refining | November 1979 | September 1982 |
| Pharmaceuticals | November 1982 | September 1983 |
| Porcelain enameling | January 1981 | November 1982 |
| Pulp and paper | December 1980 | October 1982 |
| Steam-electric | October 1980 | November 1982 |
| Textile mills | October 1979 | August 1982 |
| Timber | October 1979 | January 1981 |
| 8 projects to be promulgated: | | |
| Battery manufacturing | October 1982 | January 1984 |
| Foundries | October 1982 | June 1984 [3] |
| Inorganic chemicals (phase II) | September 1983 | June 1984 |
| Nonferrous metals (phase I) | January 1983 | January 1984 |
| Nonferrous metals forming | February 1982 | October 1983 [3] |
| Organic chemicals and plastics and synthetic fibers | February 1983 | February 1985 [3] |
| Pesticides | November 1982 | November 1984 [3] |
| Plastics molding and forming | February 1984 | September 1984 [2] [3] |
| 1 project to be proposed and promulgated: | | |
| Nonferrous metals (phase II) | February 1984 | November 1984 |

[1] Date signed by the Administrator.

[2] Industries not subject to categorical pretreatment regulations.

[3] Revised schedule, as approved by the court (August 1983, January 1984).

Note: The ink formulation, paint formulation, and adhesive and sealants projects have been excluded under paragraph 8 of the NRDC consent decree and therefore are not listed above.

*Question.* "For which industries will EPA not have final BAT regulations by June 30, 1984? (1) When will these regulations be promulgated? (2) In each instance, why was the June 1984 deadline not able to be met?"

Response: There are currently five industries which will not have final BAT regulations issued by June 30, 1984. These are: Plastics Molding and Forming; Nonferrous Metals Phase II; Nonferrous Metals Forming; Organic Chemicals and Plastics and Synthetic Fibers; and Pesticides.

The following attachment identifies the current promulgation schedules for these industries and divides these five industries into 2 generic groups to explain why the June 1984 deadline could not be met.

### ATTACHMENT—GROUP I—OTHER REGULATIONS TO BE PROMULGATED

(1) Plastics molding and forming, September 1984.
(2) Nonferrous metals forming, October 1984.
(3) Nonferrous metals phase II, November 1984.

Originating as subparts to other major categories (i.e., the Nonferrous Phase I and the Machinery and Mechanical Products Manufacturing) the above categories were formed so that the Agency's rulemaking emphasis could concentrate on the more environmentally significant problems associated with the major portions of the industry. As a result, separate studies or rulemaking activities weree initiated for 3 categories or portions of these categories. On may 7, 1982 the Court ordered EPA to prepare a schedule for these industries. The Agency developed schedules for these three categories recognizing that studies of these industries were in the early stages of development and that each industrial category regulation remained to be proposed and promulgated. EPA's May, 1982 schedules took into account the need to conduct industry-wide data collection activities for each of these categories before regulations could be proposed. The Agency had not previously studied the Nonferrous Metals Forming industry and therefore had no technical nor economic information; some preliminary data from a limited number of plants in the Nonferrous Metals (Phase II) category did exist, however, the information was inadequate for developing national regulations; and the 1977 and 1978 data gathered on the Plastics Molding and Forming category needed more extensive sampling data and technical verification. Because of additional delays of 4-6 months in the data gathering process, the Agency could not propose and promulgate legally defensible regulations for these industries in conformance with the 1982 court-ordered schedules. As a result, on August 2, 1983 the Court modified its order to establish the above promulgation schedules.

### ATTACHMENT—GROUP II—PROPOSED REGULATIONS REMAINING TO BE PROMULGATED

(1) Pesticides, November 1984.[1]
(2) Organic chemicals and Plastic and synthetic fibers, February 1985.[1]

These two categories have been proposed. These are the most complex and controversial industrial regulations on which the Agency is working. As the result of public comments which have been received, the Agency has identified previously unanticipated technical issues which have required additional data collection and analysis.

*Pesticides.*—In compliance with the Court's October 26, 1982 Order, the proposed regulations for the Pesticides industry were signed by the Administrator in November 1982 (47 FR 53994, November 30 1982). Guidelines for establishing test procedures to analyze the nonconventional pesticide pollutants covered by these regulation were proposed in February 1983 (48 FR 8250, February 10, 1983). This guideline for establishing analytical methods will be combined and promulgated in one rulemaking package with the effluent limitations guidelines and standards. In response to the concerns and request of the public, EPA extended the comment period an additional 30 days to provide time for the public to adequately comment on the proposed regulations and to provide additional data. Many of the comments received have raised fundamental questions with respect to the proposed regulation for both the manufacturing and the formulator/packager segments of the industry indicating a need for EPA to re-analyze the existing data and collect additional data prior to establishing standards. Regulations for this industry address not only the toxic pollutants covered by the Consent Decree by 137 "nonconventional" pesticides being discharged which are not covered by the Decree. The Act requires the Agency to develop BAT effluent limitations for nonconventional pollutants which are discharged in significant amounts in an industrial category. The Court was notified in the June 1983 Affidavit about the potential delay in meeting the Court orderd promulgation schedule. The Court approved the Agency's revised schedule in January, 1984. The Agency has begun to analyze and validate all acceptable new data and review in its entirety the data base underlying the proposed effluent limitations guidelines and standards. Effluent guidelines for the pesticides industry will be promulgated in November 1984.

*Organic Chemicals and Plastic and Synthetic Fibers (OPCF).*—In compliance with the Court's October 26, 1982 Order, the proposed regulations for the OPCF industry were signed by the Administrator in February 1982 (48 FR 11828, March 21, 1982). The Agency has received over 4,000 pages of comments from the regulated industry, environmental groups, governmental agencies, and citizens. Many of these commenters contend that the existing data base needs substantial improvement. The Court has already been informed that EPA believes that a substantial new data gathering effort is required to supplement the existing data base. Major steps have already been taken to gather the necessary data and sampling activities at 6 plants have been completed. The Agency is currently conducting pre-sampling activities at 4 additional plants and is scheduling 9 more sampling visits to be conducted during the next few months. EPA will promulgate effluent guidelines for organic chemicals and plastic and synthetic fibers in February 1985.

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[1] EPA's motion to change the promulgation dates was approved in January 1984.

*Question.* "Of the regulations which have been promulgated, how many have been challenged in Court, (1) In each instance, on what grounds were the regulations challenged, (2) What is the current litigation status of each of these challenges?"

Response. Eleven of the BAT/PSES/NSPS/PSNS regulations issued under the Consent Decree have been involved in litigation. These include: Timber, Coal Mining, Coil Coating Phase I, Copper Forming, Iron and Steel Manufacturing, Leather Tanning and Finishing, Petroleum Refining, Porcelain Enameling, Steam Electric, Inorganic Chemicals Phase I, and Metal Finishing. Petitions against the Coil Coating Phase I and the Inorganic Chemicals Phase I categories were voluntarily withdrawn; negotiated settlements have been reached for the Coal Mining, Iron and Steel Manufacturing, and the Porcelain Enameling categories. The Steam Electric case was voluntarily dismissed with the Agency agreeing to provide guidance to all EPA Regions. The Timber petition was dismissed after EPA amended the NSPS applicability. Negotiations, involving industry and NRDC, are currently underway for Petroleum Refining; and negotiations between industry and the Agency are continuing for Leather Tanning. More recently, members of the the Copper Forming and Metal Finishing industries have have also filed petitions to review their respective regulations; we do not know if these cases will result in settlement, be dismissed, or be litigated. By and large the petitions for review have raised technical issues posed by the regulations.

The period for filing for judicial review has not expired for some of the other categories, i.e., Aluminum Forming, Coil Coating Phase II, and Electrical and Electronic Components Phase II.

The BPT Electroplating pretreatment standards originally issued under Paragraph 13 of the Consent Decree were also challenged in the Third Circuit. On September 20, 1983, the Court upheld these standards in their entirety. The Ford Motor Company and General Motors are still pursuing a challenge to EPA's denial of a petition to amend the compliance deadline for integrated facilities.

Analysis.—The attached table covers the industrial categories addressed in the Consent Decree for which effluent guidelines have been promulgated and involved in litigation.

EFFLUENT GUIDELINES DIVISION POST PROMULGATION ACTIVITIES, DECEMBER 1983

| Projects promulgated | Promulgation signature date | Litigation | | Status of settlement |
|---|---|---|---|---|
| | | Date the perion filed | Date of settlement | |
| Petitions received: | | | | |
| Coal mining | September/1982 | October/1982 | August/1983 | Negotiated settlement: Agency Reproposal to be prepared by the Agency. |
| Coil coating (phase I) | November/1982 | March/1983 | NA | Petition voluntarily withdrawn November/1983. |
| Copper forming | August/1983 | December/1983 | | Discussions have not started. |
| Electroplating (pretreatment). | August/1979 | 1979 (2) [1]<br>1980 (1) [1] | September/1983 | Court upheld regulation on September 20, 1983: Decision covered all 8 petitions that were filed. |
| Amendment | January/1981 | 1981 (4) [1] | | |
| Denial of petition to 1979 regulations. | January/1981 | 1981 (1) [1] | | |
| Inorganic chemicals (phase I). | June/1982 | October/1982 | NA | Petition voluntarly withdrawn February/1983. |
| Iron and steel manufacturing | May/1983 | August/1982 | February/1983 | Negotiated settlement: Amendment/Reproposal/ and Interim Final were published in the Federal Register September 29, 1983. |
| Leather tanning and finishing. | November/1982 | March/1983 | | Negotiations continuing. |
| Metal finishing | July/1983 | October/1983 | | Discussions have not started. |
| Petroleum refining | September/1982 | November/1983 | | Negotiations continuing. |

| | | | | |
|---|---|---|---|---|
| Porcelain enameling | November/1982 | December/1982 | August/1983 | Negotiated settlement: Reproposal RMP to be prepared by the Agency. |
| Steam-electric | November/1982 | March/1983 | July/1983 | Case voluntarily dismissed: Agency agreed to send a memorandum to all EPA Regions—completed July/1983. |
| Timber | January/1981 | June/1982 | December/1982 | Petition was dismissed after EPA amended NSPS applicability. |

[1] Number of petitions filed.

NA = not applicable.

*Question.* "Of the regulations which have been promulgated to date, to what extent do the regulations set BAT equal to BPT."

Response. The majority of BAT regulations issued are more stringent than BPT. In most cases BAT standards are based on additional technology, reducing water flows, and process changes. A summary of the 19 industrial categories identifying the relative stringency of BAT vs BPT appears on the attached table. This table indicates that 12 of the 19 industrial categories have guidelines where BAT is more stringent than BPT.

### BAT STANDARDS FOR CONSENT DECREE INDUSTRIES (PROMULGATED)

| Industry | Status | BAT | Comment |
|---|---|---|---|
| Aluminum forming | Final | > = | |
| Coal mining | do | > | |
| Coil coating (phase I) | do | > | |
| Coil coating (phase II) | do | > | |
| Cooper forming | do | > | |
| Electroplating | do | NA | Only addresses pretreatment standards. |
| Electronics (phase I) | do | > | |
| Electronics (phase II) | | NA | RPT-BAT excluded. |
| Inorganic chemicals (phase I) | do | > | |
| Iron and steel | do | ≥ | Phase I is equal; Phase II is more stringent. |
| Leather tanning | do | > | |
| Metal finishing | do | = | |
| Ore mining | do | = | |
| Petroleum refining | do | = | Under litigation—may become more stringent. |
| Pharmaceuticals | do | = | |
| Porcelain enameling | do | > | |
| Pulp and paper | do | > | |
| Steam-electric | do | > | |
| Textile mills | do | = | |
| Timber | do | ≥ | 3 subcategories are more stringent. |

NA equals not applicable.

Regarding 301(h) (next three questions):

*Question.* "What is the current status of waiver applications submitted under the 1977 Amendments and the Agency's June 1979 regulations?

Response. The Agency received 70 301(h) applications under the original 1979 deadline and an additional 137 new applications were filed in response to the December 1981 statutory amendments, which extended the application deadline to December 29, 1982.

Responsibility for 301(h) decisionmaking originally was retained by EPA Headquarters, with tentative decisions being signed by the Administrator. Headquarters has made 25 tentative decisions on the 30 largest applications filed under the original statutory deadline. Headquarters also will make the tentative decisions on the remaining 5 of these 30 applicants; these 5 are now undergoing review. Responsibility for 301(h) decisionmaking has now been delegated to EPA's Regional Offices, and all EPA Regions with 301(h) applicants had accepted delegation by June 1983. The

Regions have made 48 tentative decisions and 18 final decisions following delegation.

Of the 73 tentative decisions made Agency-wide, 25 were approvals and 48 were denials. Of the 18 final decisions made, 4 were approvals and 14 were denials. The table below presents a breakdown of these decisions according to whether the application was filed under the original 1979 deadline or the new 1982 deadline. The applications for which decisions have not yet been made are in various stages of the review process.

| | Tentative approval | Tentative denial | Final approval | Final denial |
|---|---|---|---|---|
| 1979 applications | 22 | 10 | 4 | 1 |
| 1982 applications | 3 | [1] 38 | 0 | [1] 13 |
| Totals | 25 | 48 | 4 | 14 |

[1] Most of these denials were based on State nonconcurrence with the application or because the discharge would be into waters exhibiting freshwater characteristics.

*Question.* "What has been the result to date of the changes to section 301(h) which were made by section 22 of the 1981 Municipal Wastewater Treatment Construction Grant Amendments?"

Response. The 1981 statutory amendments extended the deadline for filing 301(h) applications to December 29, 1982. As a result, 137 new applications were filed, which are in addition to the 70 applications received under the original statutory deadline.

Agency regulations responding to the 1981 statutory amendments and to the decision in *NRDC* v. *EPA*, 656 F. 2d 768 (D.C. Cir. 1981) were promulgated in June 1982 (47 FR 24918). In addition, building on the June 1982 amendments, simplified requirements, especially for small applicants, were promulgated in November 1982 (47 FR 53666) based on the Agency's experience in implementing the 301(h) program.

*Question.* "What approximate investment—in terms of time, personnel, and dollars—must the Agency dedicate to evaluating a typical 301(h) application and reaching a decision on whether or not to grant the requested modification?"

Response. Based on our experience with reviewing 301(h) applications, we estimate that the average processing cost per application will continue at the current average of approximately $50,000 in contract costs and to require about one person-year. The average contract costs have been reduced by about one-half from our initial costs for reviewing the first 30 largest applications as a result of streamlining regulatory requirements, increased staff experience, delegations to Regional Offices, and reduced average project size. There may be considerable variation from the average figures for a particular application depending on such things as the size of the discharge, sensitivity of the receiving waters, and complexity of the issues raised. The actual calendar time to complete review of an application depends on whether the application contains all necessary data and whether EPA's decisions are appealed.

We believe that this is an efficient system given our objective to assure effective community participation in the waiver application and review process and standard permit issuance regulatory requirements.

*Question.* "An April 1981 general accounting office report was highly critical of water quality monitoring techniques being used to assess the quality of our rivers and streams. How would you evaluate current water quality monitoring efforts?

(A) What are the major weaknesses of our current water quality monitoring program?

(B) What more can and should be done at current funding levels?

(C) To what extent do we currently have the necessary detection capabilities, testing protocols, analytical techniques, and quality control in connection with quality monitoring of (1) conventional pollutants, (2) the priority toxic pollutants, and (3) other toxic pollutants?"

Response. The General Accounting Office (GAO) recommended termination of three national stream quality monitoring networks. EPA, other Federal agencies, and States disagreed with this recommendation, since fixed station networks are a valuable part of State and EPA programs to assess the nation's water quality. Nevertheless, we did agree with and have implemented other recommendations in the GAO report.

As you know, most water quality monitoring under the Clean Water Act is carried out by the States, with assistance from EPA. Our ability to conduct national assessments has been limited by the fact that data and analyses have not been consistent from State to State. Furthermore, State programs have tended to emphasize monitoring of conventional pollutants, and only recently have begun to focus on toxic pollutants and biomonitoring. In addition, we have lacked techniques for developing national estimates that are statistically sound.

Our programs at current funding levels are making improvements in three areas: national assessments of water quality, monitoring needed for program evaluation, and monitoring required in setting water quality-based limits. First, with regard to national assessments, EPA is working with the States to improve the ways States convey their knowledge of water quality to EPA. EPA has recently completed a joint project with the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) to develop uniform reporting procedures that will result in better use of existing data. In regard to statistical estimates, we have completed the Aquatic Life Survey, the first national assessment of water quality to provide statistically sound estimates of water quality. We will also be developing recommendations for longer longer-term improvements in monitoring programs as part of the Deputy Administrator's Task Force on Monitoring. As part of this effort, we will develop a program strategy for water monitoring this spring for consideration by the Agency. Also, with regard to the lack of data on toxics, we have tested an approach to collecting existing data on biological conditions and we have emphasized biological and toxics data collection for the 1984 Section 305(b) report.

With regard to program evaluation, our efforts are to quantify information instead of using existing information which is anecdotal in nature, e.g., "success stories" which do not provide an overall look at the natural effect of control programs. To strengthen our capabilities in this area, we have carried out a study of the water quality effects of a number of construction grant projects. In addition, we will be addressing these needs in the Monitoring Strategy mention above.

Our concerns in setting water-quality based limits, at least for conventional pollutants, are primarily related to a need for better technical assistance for the Regions and States. In addition, in order to help strengthen State and EPA capabilities in the toxics area:

We have issued a policy which encourages the use of biomonitoring and screening techniques as part of an integrated approach to developing water quality-based effluent limitations for toxic pollutants.

We are developing key technical guidance for those steps in the standards-to-permits process where the lack of technical tools is critical. The most important gaps today are in the biomonitoring area, as well as design conditions and toxic pollutant methodologies for wasteload allocations.

We are initiating a more active program of technical assistance not only covering the critical gaps noted above, but also seeking to bring the weaker States up to the technical levels necessary to carry out these programs.

With regard to the specific concern about analytical techniques, the States and EPA have the appropriate equipment and procedures to collect most chemical, physical, and biological data, particularly for conventional pollutants, metals and pesticides on the priority pollutant list. However, States are limited to some extent in their ability to measure some of the other organic chemicals (priority pollutants and others), and the biological effects, both acute and chronic toxicity, associated with some of these chemicals. For instance, only about half of the States can measure levels of the full range of organic chemicals contained on the Section 307(a)(1) priority pollutants list. In many cases, chemicals are toxic at levels below chemical analytical detection limits. In other cases, methods may not yet be sophisticated enough to measure sublethal toxic effects. However, we are concentrating our efforts in these areas and new procedures are being developed and tested that should help fill this void.

*Question.* "Mr. Ruckelshaus, We note that the Administration included amendments to Section 316(a), the Clean Water Act's thermal discharge variance provision, in its legislative proposal for last year. Section 9 of the proposals which you attached to your testimony likewise would amend the Act's current thermal discharge variance provision. Does this reflect the Agency's judgment that there is now sufficient evidence that heat is not the serious environmental concern Congress once thought it might be, and thus that thermal variances would be made more readily available for new power plants, by allowing them where thermal water quality standards are met by such plants?"

Response. The Agency still considers thermal pollution an environmental problem in certain situations. The thermal variance is intended to give new and existing power plants relief from national effluent limitation guidelines and State thermal standards, provided a balanced aquatic population is maintained. At present no national technology-based thermal BAT requirements have been promulgated and to our knowledge no technology-based best professional judgment permits have been based on established State water quality standards. Our present analysis is that it is unlikely that future permits will incorporate technology-based thermal requirements based on effluent guidelines or best professional judgment.

*Question.* "Mr. Ruckelshaus, the administration's proposal includes a suggestion that the word "indigenous" be dropped from the balanced indigenous population test in Section 316(a). Does this suggestion reflect the Agency's judgment that the exact type of "balanced population" of shellfish, fish and wildlife to be protected under Section 301(a) is a State resource management decision and should not be prejudged by Congress in the Act?"

Response. The purpose of the term "indigenous" is to preclude basing 316(a) decisions only on the presence of pollution-tolerant species. EPA has broadly interpreted this term and has not required unduly rigid tests. For example, EPA's draft 316(a) technical guidance manual (distributed in May, 1977) establishes the framework for determining Representative Important Species (RIS) which may include species which are benefitting from the thermal discharge, and that were not historically native to the area. In addition, the appropriate State and federal wildlife authorities are consulted on the RIS list to ensure that the species selected are representative of "indigenous" forms including those species protected by State water quality standards or the Endangered Species Act.

*Question.* "How does the Agency currently perform the balanced indigenous population test in Section 316(a)? How proximate to the point of discharge is the test applied? Alternatively, for what distance from the discharge point is the test considered to be relevant and applicable?"

Response. In reviewing a 316(a) demonstration the Agency relies on the Representative Important Species (RIS) rationale developed by the applicant in consultation with State and federal wildlife authorities. The RIS serves as the benchmark for assessing thermal impacts on the balanced indigenous populations of aquatic organisms. In most cases, State designated mixing zones which allow a rise in temperature above State water quality standards, determine where the test is applied. In these situations, the balanced indigenous population test applies at the edge of a mixing zone which can vary from feet to several hundred yards from the point of discharge.

*Question.* "Which States currently have thermal water quality standards?"

Response. All States have thermal water quality standards, which vary in specificity. Thermal standards may apply State-wide; others may use specific (e.g., warmwater or coldwater fisheries; or stream specific). All States have thermal standards for: (1) a maximum temperature not to be exceeded as a result of the impact of the thermal discharge, and (2) a maximum rise in temperature above natural conditions as a result of the impact of the thermal discharge.

*Question.* "A number of witnesses in our hearings have addressed the special problems faced by "integrated facilties," that is, plants which must comply with two or more sets of BAT and/or pretreatment regulations. Some have testified in support of the position that, for compliance purposes, discharging integrated facilities should have three years after promulgation of the last set of regulations applicable to the facility. Others take the position that EPA's combined wastestream formula is adequate to deal with the problem faced by integrated facilities. Would you please comment on this matter? Would you be willing to work with the Committee in an effort to attempt to appropriately resolve this problem?"

Response. The combined wastestream formula certainly has been one of the more controversial provisions of the General Pretreatment Regulations. Within the Agency, the formula has been the object of lengthy and intense scrutiny and reviews. It also was one of the regulatory provisions challenged in the pretreatment litigation and upheld by the Third Circuit. I believe the combined wastestream formula is a sound and reasonable tool for applying multiple categorical pretreatment standard to integrated industrial facilities.

Under existing law, EPA cannot extend deadlines for compliance with pretreatment standards, and the Agency believes that further delay of compliance dates by integrated facilities is unwarranted and unnecessary. Section 307(b) of the Clean Water Act requires compliance with a categorical standard no later than three years from the date of its promulgation. Therefore, existing law prohibits deferring compliance with pretreatment standards until the last one applicable to an integrated facility is promulgated. Integrated facilities should be treating only compatible wastes in a single treatment system. If that is the case only minor adjustments, if any, to the treatment system would be necessary to achieve compliance with changing standards as new standards for additional compatible wastes become applicable to the integrated facility. Incompatible wastestreams need to be segregated and treated separately. In any event, the greatest change to a facility's wastestreams will occur when the first standard is applicable to that facility; the greatest reduction in pollutant loading will be from raw discharge down to the level in the categorical standard. As other pretreatment standards become applicable, EPA expects the new limits derived from the combined wastestream formula to be within the range already required to achieve compliance with the first applicable categorical standard.

EPA is aware of the treatment technology relied upon in previous regulations when it promulgates subsequent standards; thus we seek to avoid a significant problem because of staggered promulgation of standards. If commenters believe the Agency has not properly considered the impact of a regulation on an integrated facility, this would be an appropriate area for comment during the rulemaking process of a subsequent standard, and might provide cause for adjusting the proposed standards before their final promulgation.

I will be glad to talk to the Committee further on this issue but I do not believe that the problem warrants any major changes.

*Question.* "Some have suggested that a new industrial category should be established for integrated facilities. What are your thoughts concerning this proposal?"

Response. I believe that a separate industrial category estabished for integrated plants is unnecessary. As discussed in my previous answer, the combined wastestream formula is an appropriate mechanism for determining discharge limits for such facilities, as it takes into account the mix of processes which are present at a given plant site.

Additionally, it would be impossible to establish a separate category for integrated facilities. American industry is extremely diverse and does not always fit neatly into standard industrial classifications. Steel plants, for instance, perform a number of industrial operations aside from steel. Porcelain enamel manufacturers often engage in plastics manufacturing. Auto manufacturers perform a multitude of operations. Given the extreme diversity of processes performed by most industries, the concept of regulating a whole plant would be a recipe for plant-by-plant regulation. This approach, however, was rejected by Congress under the approach contemplated in the Clean Water Act.

Finally, establishing a separate category for integrated facilities would delay the ongoing implementation of the pretreatment program at a time when program momentum is building.

*Question.* "To what extent does the Agency have data describing number and variety of plants or facilities which are integrated facilities?"

Response. The Agency has a substantial amount of technical and economical data that describes the number and variety of plants or facilities which are integrated facilities within the specific industrial categories. During a national industry-wide data collection activity the Agency collects data through literature searches, specific plant sampling and analysis, and extensive surveys of the industry via technical questionnaires. Additionally, during the comment period for a proposed regulation the industry may voluntarily submit new data and information. Examples of industries for which the Agency has recognized the existence of plants or facilities as being integrated facilities include the following industrial categories: over 200 for Petroleum Refining; over 200 for Iron and Steel Manufacturing; over 700 for Metal Finishing; over 40 for Aluminum Forming; 25 for Nonferrous Metals; 500 for Organic Chemicals and Plastics and Synthetic Fibers; and 230 for Pulp, Paper, and Paperboard.

*Question.* "For purposes of Clean Water Act regulatory responsibilities and authority, what status do Indian Tribes have and what role do they play in implementing the Clean Water Act? Where a State in which an Indian Tribe is located has stricter water quality standards than might be required by U.S. EPA, which standards are the Tribe held to?"

Response. Since the Act defines Tribes as "municipalities" they are eligible to receive Section 201 construction grants if they are placed on the States' priority lists. The problem of delegation and authorities under other sections of the Clean Water Act is subject to legal debate as Tribes are not expressly mentioned.

"The respective roles of the Indian Tribes and the states to establish water quality standards for waters lying within tribal reservations is presently at issue in *Pyramid Lake Paiute Tribe* v. *EPA*, No. 82-89 (D. Nev.). There plaintiff has challenged water quality standards adopted by the State of Nevada on the grounds, among others, that the State lacked jurisdiction to set standards for the Truckee River within the Tribe's reservation.

The government's position in the litigation on this issue has not yet been formulated and will require further close consultation among the Department of Justice, EPA and other Federal agencies."

EPA is also developing an Agency policy which will address a variety of related issues regarding the administration of reservation programs. This policy is expected to call for an enhanced Tribal role in decisions and programs affecting the quality of reservation environments.

*Question.* "In your testimony, you mention the recent Third Circuit decision denying EPA's legal authority to issue fundamentally different factor variances. Does the Agency intend to appeal the Third Circuit's decision? What impact will the decision have on Agency programs? How broad is the reach of the decision, in your opinion? To what extent has the Agency, in the course of implementing the Act since 1972, employed fundamentally different factor variances in implementing the Clean Water Act? How many variances have been issued? For what types of pollutants and which industrial categories? (Please provide a detailed response for the record)?"

Response. The Agency believes that the fundamentally different factors (FDF) determination procedure is an appropriate mechanism to provide a safety valve for those facilities that may not be able to meet the categorical pretreatment standard limitations applicable to such facilities due to their unique factors. The mere availability of FDF determinations has been an important safety-valve which has been instrumental in defending national regulations against judicial challenges. In some instances courts have expressly relied on the FDF determination mechanism to uphold the national rule, *see*, e.g., *Kennecott Copper Corp.* v. *EPA*, 612 F.2d 1232 (10th Cir. 1979); *AISI* v. *EPA*, 526 F.2d 1027, 1061 (3rd Cir. 1975); *Weyerhaeuser Co.* v. *Costle*, 590 F.2d 1011, 1040-1041 (D.C. Cir. 1978).

The United States Court of Appeals for the Third Circuit stated that "FDF variances for toxic pollutants are forbidden by the (Clean Water) Act." *NAMF* v. *EPA*, 719 F.2d 624 (1983). Therefore, EPA cannot grant a request for an FDF determination for a toxic pollutent regulated in a categorical pretreatment standard. However, since the opinion only addressed the availability of FDF determinations for toxic pollutants, such determinations for conventional and non-conventional pollutants regulated in a categorical standard remain available for facilities subject to pretreatment limitations. EPA will amend 40 CFR § 403.13 to comply with the Court's opinion in the near future.

EPA requested that the Solicitor General seek Supreme Court review of the Third Circuit's FDF decision. The Solicitor General has agreed to seek a review of this decision. The Chemical Manufacturers Association has filed its own petition seeking Supreme Court review.

Until the Clean Water Act can be amended to confirm the Agency's authority to make FDF determinations for toxic pollutants, or the Supreme Court remands the Third Circuit decision, EPA has suggested another mechanism to address those existing indirect dischargers who would previously have been eligible to apply for FDF determinations from pretreatment standards. This mechanism has been discussed in the preamble of every effluent guideline promulgated since the date of the Court's decision. The alternative mechanism involves a rulemaking petition to the Administrator by the indirect discharger or other affected party to examine the factors and determine whether the pretreatment standard is properly applicable to the specific case or should be revised. The Agency will consider these rulemaking petitions and determine whether a rulemaking should be initiated.

At present the Agency does not have exact data available on the number of indirect dischargers that have applied for FDF determinations. Before the decision EPA had received approximately 50 applications, but this does not include those received for review by delegated States. However, we expect few applications to be submitted in the future because the Third Circuit decision limits the Agency FDF authority to non-toxic pollutants only. Few of the categorical standards for indirect dischargers contain limits for non-toxic pollutants.

Since the promulgation of effluent limitations guidelines regulations (guidelines) and the implementation of these guidelines in NPDES permits, there have been 53 FDF determination requests for direct dischargers submitted to EPA Headquarters for approval; there have been four approved, 14 denied, 16 withdrawn and 19 pending requests.

The information requested on the four FDF determination requests for direct dischargers that have been approved appears on the next page.

| Facility | Date of approval | Point source category | Pollutants |
|---|---|---|---|
| Southern California Edison: | | | |
| Huntington Beach Generating Station. | February 22, 1977 ... | Steam Electric Generating (40 CFR & 423.32(b)(6) (1974)—Boiler Blowdown. | Total Suspended Solids, Oil & Grease, Total Iron, Total Copper. |
| San Onofre Nuclear Generating Station. | ......do ...................... | Steam Electric Generating (40 CFR & 423.32(b)(6) (1974)—Boiler Blowdown. | Total Suspended Solids, Oil & Grease, Total Iron, Total Copper. |
| Birdsall Sand and Gravel, Oral, S. Dak.. | July 10, 1978 .......... | Construction Sand and Gravel Subcategory of Mineral Mining and Processing. | Total Suspended Solids. |
| Freeport Chemical Co., Uncle Sam, La. | June 3, 1981 ........... | Phosphate Subcategory of Fertilizer Manufacturing. | Total Phosphorus, Fluoride, Total Suspended Solids. |

*Question.* "The Committee has received a great deal of testimony concerning the alleged unworkability of EPA's removal credit approach. Is the question of removal credits, while logically sound, too administratively complex to be meaningfully implemented?

Response. EPA believes that the removal credit approach is fundamentally sound. Indeed, a recent court decision has upheld the Agency removal credits regulations against allegations that they are unworkable. However, EPA recognizes that some simplification of the process would be appropriate.

EPA is taking measures to simplify the process which allows POTWs to adjust categorical pretreatment standards to reflect the reduction in toxic pollutants achieved at municipal treatment facilities. The Agency published proposed changes to the removal credits provision of the General Pretreatment Regulations in September, 1982. These changes include several measures which would make it easier for POTWs to qualify for the issuance of removal credits.

First, the Agency proposed to expand the range of sampling methods and analytical protocols permitted for demonstrating pollutant removal at POTWs. Second, the Agency proposed to eliminate a complex adjustment to removal rates for combined sewer overflows and bypasses. The Agency has also proposed to allow the use of historical and other data where sufficient data is not available for calculating removal rates. As these changes show, the Agency is committed to streamlining the removal credits provision. A final rule on removal credits should be published in the Federal Register in the near future.

The Agency is committed to implementing the pretreatment program and the removal credit provision. The Agency has conducted POTW workshops and seminars which explain the pretreatment program, including removal credits, and is planning guidance materials for developing and approving removal credits. The removal credit provision will be a topic for discussion in the Pretreatment Implementation Review Task Force.

*Question.* "On page 4 of your statement, you mention an EPA study of construction grants issues. Would you outline in more detail the scope and purposes of the study and schedule for its completion?"

Response. Given the changes in construction grants eligibilities and the federal share that begin in FY 1985 and the termination of the current authorization for the grants program at the end of FY 1985, the Agency believes it is prudent that we begin to examine feasible alternatives for the construction, proper operation, and eventual replacement of needed municipal wastewater treatment facilities. In initiating this study, we feel that critical consideration must be given to the appropriate federal role in obtaining expeditious municipal compliance and long-term local self-sufficiency.

Along these lines, we feel that viable federal alternatives (which may include non-financial as well as financial components) must not only represent an effective and wise-use of federal resources, but must also provide a suitable environment for fostering local initiatives in providing needed services. The issue areas we expect to address include local self-sufficiency (financial, managerial, technical and institutional requirements and competing infrastructure needs), State programs (existing and planned) for assisting municipalities, and alternative federal funding, compliance and technical assistance strategies that might fill the gap for identified unmet needs and address specific problem areas.

We expect to publish a Federal Register notice in February 1984 to solicit public comment on the Agency options and the study. We will keep your staff informed of progress made on this study and its recommendations, which we expect to complete by November 1984.

*Question.* "One of the recommendations of the Administration calls for a change in the conflict of interest requirements. Would you discuss the kinds of difficulties that have led to this recommendation, including examples of which you may be aware?"

Response. EPA has found that some States have been unable to meet the current statutory conflict of interest requirement in Section 304(i)(2) of the Clean Water Act, which is a prerequisite to EPA approval of a State NPDES program. State statutes sometimes require a State Board to be represented by the industries or municipalities they must regulate as board members. Historically, this has been a problem in the review of many State programs.

Although most States apparently can meet the current requirement, at least two States, Oklahoma and Texas, cannot now be approved by EPA to run the NPDES program since they cannot ensure that all board members will not have a conflict of interest. By statute, the Oklahoma Water Resources Board must consist in part of industrial and agricultural representatives. The Texas Railroad Commission is selected through State-wide elections, and often included persons who would fall within the current prohibition. In addition, compliance with the conflict of interest requirement has become a problem in already approved NPDES States.

The Administrator's Clean Water Act proposed amendment, which tracks the current Clean Air Act provision, would still prohibit a majority of Board members from having a conflict of interest. In addition, any member with a conflict must disclose that conflict. This requirement, coupled with the existing statutory safeguard authorizing EPA to object to a proposed State permit, should minimize the chance that a State Board member will give particular permit applicants favorable treatment.

*Question.* "On page 19, you mention a nonpoint source Report to Congress. Would you describe the scope of this report, its schedule for submission and to which committees you are submitting the report?"

Response. In the House Report on the FY 1984 Appropriations Act for the Environmental Protection Agency, EPA was requested to "analyze the extensive body of past research in nonpoint source problems to identify and rank the highest payoff problem areas and submit a report by January 1, 1984, outlining specific strategies and approaches recommended for addressing nonpoint sources in a cost-effective manner."

The report was submitted on January 23, 1984. Copies were sent to the following Committees: Senate Environment and Public Works, Senate Appropriations, House Public Works and Transportation, and House Appropriations. We will be glad to share the Report with other Committees and individuals as requested.

*Question.* "Some have suggested that innovative treatment technologies in the pretreatment area should be treated as they are for direct dischargers, that is, additional time for compliance where better results and more efficiency results from these methods. We even heard examples in the electroplating/metal finishing area. Would you give us your views on this proposal?"

Response. The Agency is not currently pursuing any change that would allow an innovative technology delay for indirect industrial dischargers. We are aware of only one municipality, one State and three industries which have expressed any interest in this possibility. However, it may be a subject of discussion in the Pretreatment Implementation Review Task Force, which met for the first time February 14 and 15, 1984.

*Question.* "You discuss a new task force on pretreatment. Their input could be helpful to the committee's work as well as to EPA as you carry out the pretreatment program. Is there a schedule for their recommendations?"

Response. The Agency has established the Pretreatment Implementation Review Task Force. The purpose of the Task Force is to identify issues and seek solutions to problems experienced by municipalities, industries and States in the implementation of the program. The Task Force has been approved by the General Services Administration.

The first meeting of the task force was held February 14 and 15, 1984. The Task Force has been established for an 11 month period. Initial recommendations are expected this Summer with additional recommendations due by the end of fiscal year 1984.

Periodic reports will be issued on the Task Force activities and we will welcome any specific comments and questions you may have on the Task Force proceedings.

*Question.* "The 1981 amendments contained changes in municipal compliance dates and the definition of secondary treatment, among others. The EPA has not yet announced policy decisions in carrying out these changes. What has delayed getting the municipal compliance policy and secondary treatment regulations out? Also, what is your schedule to have these out?

Response. Municipal compliance—Final publication of the National Municipal Policy was delayed for a number of reasons: 1) the need for a thorough internal policy review by the new leadership of the Agency; 2) the desire to resolve the redefinition of secondary treatment so that municipalities would have more certainty regarding their applicable effluent limits; and 3) the importance of having implementation guidance available for use by the Regions and States. The proposed redefinition was published in the November 16, 1983 Federal Register, and the guidance is now ready for distribution. The National Municipal Policy was published in the Federal Register on January 30, 1984. Guidance for implementing the policy will be distributed during the week of February 13, 1984.

Secondary Treatment—Work had already begun on development of the regulations to redefine secondary treatment prior to the 1981 amendments to the Act. As a result of the 1981 amendments, additional issues had to be addressed in the regulations which required the undertaking of a large data collection and analysis effort. Daily monitoring data on over 300 POTWs was collected and statistically analyzed to support the conclusions in the proposed secondary treatment regulations. These proposals were published in the November 16, 1983 Federal Register. The public comment period extends to January 16, 1984, and the regulations are expected to be published in September 1984.

*Question.* "Testimony presented earlier in these hearings made the point that implementing Federal categorical pretreatment standards in lieu of the City of Chicago's (Metropolitan Sanitary District of Greater Chicago) existing pretreatment program "could result in a net reduction in control reuirements for industrial facilities at a substantially greater program cost for operations." If this situation is true with respect to Chicago, and other publicly owned treatment works, wouldn't the most environmentally responsible and fiscally sound public policy be to allow the stricter and more cost effective locally established program to be implemented?"

Response. The General Pretreatment Regulations clearly affirm the authority of Publicly Owned Treatment Works (POTWs) to establish local pretreatment limits more stringent than the categorical pretreatment standards where necessary. Furthermore, the regulations require POTWs to establish specific limits to control industrial discharges which jeopardize public health or safety, interfere with the operation of the POTW or cause violation of applicable environmental controls, such as NPDES permit limits or water quality standards. Categorical standards do not supersede these local limits when the local limits are more stringent, therefore, "net reductions in control requirements" will not occur. It is theroretically possible that a municipality could withdraw its local limits (which are more stringent than categorical standards) and cause a net reduction in control requirements. This situation is unlikely because local limits may still be required to protect against pass through, inteference or prevent a water quality problem. If the stringent limits set by the municipality are truly necessary, then local limits in addition to categorical standards will be needed to satisfy the 403 regulations.

The national pretreatment program is now at a critical point. More than 400 POTWs have approved local programs in place. Many more are well along in developing approval programs. Nineteen technology-based categorical guidelines containing pretreatment standards have been issued and eight more are under development. Any major shift away from the present program would raise serious questions of fair treatment and undoubtedly would delay the implementation of a national effort to control toxic industrial discharges to municipal sewerage systems by at least two years.

The Agency has, however, taken measures to increase the flexibility of the national pretreatment program. We will publish shortly final regulations which streamline the procedure by which POTW's can modify categorical pretreatment standards to reflect the removal of toxic pollutants which is achieved at the municipal treatment facility. I have formed the Pretreatment Implementation Review Task Force, which includes representatives of States, municipalities, industries, the environmental community, and EPA. I hope that this task force will resolve at least some of the concerns that we have heard about the program.

U.S. Environmental Protection Agency,
Office of External Affairs,
*Washington, D.C., February 17, 1984.*

Hon. James L. Oberstar,
*House of Representatives,*
*Washington, D.C.*

Dear Mr. Oberstar: Enclosed are the Environmental Protection Agency's responses to the questions you recently submitted to Administrator William D. Ruckelshaus following his testimony before the Subcommittee on Water Resources. Please be advised that we consider these to be responses to technical questions regarding H.R. 4037, and they are not to be construed as administration support for this bill.

I apologize for the delay in getting our responses to you. If I can be of further assistance, please feel free to contact me.

Sincerely yours,

Steadman M. Overman,
*Director, Office of Legislative Analysis.*

Enclosure.

*Question.* "H.R. 4037 requires States to submit certain information, and a completed implementation plan, within 270 days of enactment. Is this timeframe adequate for most States. How should we handle those States which cannot meet that deadline? Approximately how many States, in your judgement, would be able to meet the 270 day deadline?"

Response. We believe that 270 days is more than adequate for States to submit the information required in Section 319(b)(1)(B). We believe that those States with identified NPS problems could submit a plan in 270 days.

*Question.* "How long does EPA need to review these plans? H.R. 4037 now provides 6 months. Is this adequate? Is it too long?"

Response. The 6 months provided by H.R. 4037 is adequate for EPA to review completed State implementation plans.

*Question.* "What agencies, within USDA, have been involved or would be included in, future interagency agreement? What other Federal agencies will be, or should be included in similar agreements?"

Response. The agencies within USDA which have been involved, or would be included, in future interagency agreements are: the Agricultural Research Service (ARS), the Agricultural Stabilization and Conservation Service (ASCA), the Economic Research Service (ERS), the Extension Service (ES), the Farmers Home Administration (FHA), the Forest Service (FS) and the Soil Conservation Service (SCS).

Other Federal agencies which could be considered for similar agreements are:

(a) The Department of the Interior: The Office of Surface Mining (OSM), the Bureau of Mines (BM), the Bureau of Indian Affairs (BIA), the Bureau of Reclamation (BR), the National Park Service (NPS), the Fish and Wildlife Service (FWS) and the Geological Survey.

(b) The Department of Housing and Urban Development: The Federal Housing Administration (FHA).

(c) The Department of Transportation: the Federal Highway Administration (FHA), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA) and the Urban Mass Transit Administration (UMTA).

(d) The Department of Commerce: the National Oceanic and Atmospheric Administration (NOAA).

(e) The Tennessee Valley Authority (TVA).

(f) The Appalachian Regional Commission (ARC).

*Question.* "What timeframes should we consider, what measurements should we use to evaluate a nonpoint source program? Congress has so far generally given the Clean Water Act 5-year reauthorizations; but it will most probably take longer to measure improvement in water quality. What should a realistic timeframe for a nonpoint source control program (the State of Wisconsin, for instance, uses a 20-year program), and by what shorter-term (4-5 years) criteria should we evaluate the program, for administrative and legislative purposes?"

Response. In your question regarding timeframes for evaluating nonpoint source programs, you correctly note that it takes a long time to measure improvements in water quality. Yet Congress must have some way to evaluate the effectiveness of nonpoint source programs in a shorter timeframe for administrative and legislative purposes.

Experiences in the State of Wisconsin's Nonpoint Source Water Pollution Abatement Program indicate that it takes up to 9 years for a nonpoint source watershed implementation project to be completed, with projects including the following implementation states:

| | *Time (in years)* |
|---|---|
| a. Project selection, watershed evaluations, and development of a detailed implementation plan | 1 |
| b. Landowners enter into cost sharing agreements for implementation of best management practices | 2 |
| c. Best management practices installed | 6 |
| | 9 |

Based on Wisconsin's experience, within 5 years of initiation of an implementation project, one should be able to obtain quantitative data on the number and type of best management practices implemented in particular projects. There should be some limited data on WQ effects within 5 years, but more significant and meaningful data on the WQ effects will probably require 7 years.

As a point of clarification, the State of Wisconsin estimates that it will take 25 years to complete implementation of best management practices in 120 watersheds in the State. As discussed above, each of these watershed projects takes about 9 years to complete.

*Question.* "What information will we need four years from now, that we should begin gathering in this initial program? It is critically important that we view this first four years as not only an implementation program, but also as a means to fill in the gaps in our present knowledge so that whatever program is enacted in 1988 will be fully effective."

Response. The Agency currently has mechanisms to collect information on NPS. If the proposed amendment was enacted, 4 years from now we could have the following information available:

(a) Verified, prioritized lists, by States, of waters where designated uses are impaired or threatened by NPS pollutant contributions.

(b) Specific implementation schedules, including starting and ending dates and resource estimates, for abating such NPS pollution.

(c) Hard, baseline data on water quality in selected portions of such waters before implementation of NPS controls so that the change in water quality after implementation of controls can be clearly and conclusively evaluated.

(d) The successes and limitations of different types of institutional arrangements and management approaches (e.g. technical assistance, education, Best Management Practices (BMP) demonstration, regulation, cost sharing) in achieving BMP implementation with respect to different types of NPS pollution (e.g. agriculture, silviculture, urban runoff).

(e) Clear documentation of initial water quality changes/improvements in selected instances where States or localities have had control programs in place long enough to produce such changes/improvements.

(f) Clearly and fully documented costs for the BMPs utilized in connection with the water quality changes/improvements referenced in (e) above so that we can begin to associate control costs with water quality improvements.

With regard to the draft Nonpoint Source Control Policy (next 6 ques.):

*Question.* "You state the Agency will use existing resources to implement this policy. Which are these? How are these resources presently committed, and what other activities, if any, will have to be curtailed in favor of nonpoint source control activities?"

Response. The existing resources are contained in the Water Quality State Programs Management budget. These resources are associated with overall State grants and water quality management oversight, planning and implementation, including nonpoint source control.

We foresee no need to curtail other activities. The Administrator allocated resources from the 1984 Congressional add-on for nonpoint source (NPS) control activities. With these resources, the Agency has prepared the NPS report requested by Congress (submitted January 1984), completed development of a proposed EPA NPS policy, is revising the interagency agreement on NPS control with the Department of Agriculture, is completing the Nationwide Urban Runoff Program final report, is overseeing NPS projects funded under § 205(j), and is providing technical assistance to States, localities, and other Federal agencies working on NPS control program development.

*Question.* "At the State level, what activities currently performed under Secs. 106 and 205(j) are most likely to be curtailed in order to comply with the Agency's new

Policy and Program? What will be the impact of this curtailment on ongoing State programs?"

Response. To the extent that such curtailment is necessary, the States will delay problem assessments and control program development and implementation for lower priority water bodies. Curtailment of major point source control activities, primarily permitting and enforcement, will not be necessary.

*Question.* "How many States have not yet submitted adequate information called for by the March 31, 1984 deadline? How many will, in your estimation, not be able to meet that deadline?"

Response. As a point of clarification, the deadline for submission of the 1984 305(b) reports has been extended from March 31, 1984 to June 1, 1984. Most States have not yet submitted the information called for by Section 305(b) of the Clean Water Act.

EPA issued guidance in September 1983 to States on information requested in the 1984 305(b) reports (EPA Office of Water Regulation and Standards, "Guidance: 1984 State Section 305(b) reports"). This guidance calls for the State's to report more information than they have in the past on nonpoint source pollution. It is likely that only a limited number of States will be able to provide a detailed list of water bodies impacted by nonpoint sources and needing implementation of additional controls. We anticipate that the remaining States will submit information of varying quality and EPA will need to continue to work with those States to improve the identification of water bodies impacted by nonpoint source pollution.

*Question.* "How many States will not readily be able to develop a nonpoint source Pollution Management Program? (This question obviously relates to the ability of States to comply with the requirements of proposed legislation.)"

Response. We expect that the States which have identified their NPS problems will readily develop a program if proposed legislation is enacted. Many States have identified nonpoint sources as a major priority water pollution control problem, and have already completed a substantial amount of the problem identification and planning work necessary to comply with proposed Pollution Management Program requirements. States not readily able to meet proposed requirements will, most likely, be those where nonpoint sources have not been perceived to be a priority problem compared to remaining major point source problems.

*Question.* "Are authorities under the existing Act adequate to assure participation in this new initiative, absent new resource incentives to States? How many States do you anticipate will participate?"

Response. Yes, authorities under Sections 106 and 205(j) are adequate. EPA has the authority to negotiate a State's proposed program to ensure that a reasonable portion of the State's 106 and 205(j) allocations are devoted to nonpoint source activities.

*Question.* "Can you accomplish the goals of 304(k) with existing resources?"

Response. We can negotiate or renegotiate the necessary interagency agreements over time. We can achieve that with existing resources but it might be necessary to extend the implementation period over several years.

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U.S. Environmental Protection Agency,
*Washington, D.C.*

Hon. Robert W. Edgar,
*House of Representatives,*
*Washington, D.C.*

Dear Mr. Edgar: Enclosed are the Environmental Protection Agency's responses to the questions you recently submitted to Administrator William D. Ruckelshaus following his testimony before the Subcommittee on Water Resources.

If I can be of further assistance, please feel free to contact me.

Sincerely yours,

Gregg Ward,
*Director, Office of Congressional Liaison.*

Enclosure.

*Question.* EPA's present rules contain a complex mechanism (40 CFR 403.7) which allows the Agency to grant "removal credits" to an industrial discharger to reflect that portion of treatment done by a POTW on a given industrial discharge regulated by categorical pretreatment standards. In theory, this should prevent duplicate treatment by the industry and the POTW. How many POTW's have applied for "removal credits"? How many applications have been approved? What improvements, either administrative or legislative, could be made in the "removal credits" process to help ensure that unnecessary duplicate treatment is not required?

Response. EPA is taking measures to simplify the process which allows POTWs to relax categorical pretreatment standards to reflect the reduction in toxic pollutants achieved at municipal treatment facilities. The Agency published proposed changes to the removal credits provision of the General Pretreatment Regulations in September, 1982. These changes include several measures which would make it easier for POTWs to qualify for the issuance of removal credits.

First, the Agency has expanded the range of sampling methods and analytical protocols permitted for demonstrating pollutant removal at POTWs. Second, the Agency has eliminated a complex adjustment to removal rates for combined sewer overflows and bypasses. The Agency has also allowed the use of historical and other data where sufficient data is not available for calculating removal rates. The Agency is considering another change—extending the effective date of the removal rates. By making removal rates effective for the life of the POTW permit, the POTW and its industrial users will have the same pretreatment standards for at least five years. As these changes show, the Agency is committed to streamlining the removal credits provision.

The Agency is also committed to implementing the pretreatment program and the removal credit provision. The Agency has conducted POTW workshops and seminars which explain the pretreatment program including removal credits and is planning guidance materials for developing and approving removal credits.

In reply to your question about the number of POTWs which have applied for removal credit authority, we do not have ready access to this information, since these applications are reviewed by States which have approved pretreatment programs or by EPA Regional Offices. However, Region V in Chicago reports that they have received two removal credit applications and are aware of 38 other POTWs which are preparing applications. To the best of our knowledge, no POTW has yet received approval to grant removal credits.

It should be noted that even where removal credit approval procedures are streamlined, there are many POTWs, especially those involved in some form of sludge utilization program, which are not likely to grant removal credits for heavy metals and other pollutants which might adversely affect sludge quality and thereby restrict the POTW's sludge disposal options.

*Question.* The Third Circuit Court of Appeals has struck down the "fundamentally different factors" variance of 40 CFR 403.13. How does EPA plan to operate the categorical pretreatment program without some means to allow for conditions that are fundamentally different from those considered during the writing of the general regulations.

Response. The Agency believes the procedure to determine the fundamentally different factors (FDF) variance is an appropriate mechanism to provide a safety valve for those facilities that may not be able to meet the categorical pretreatment standard applicable to such facilities due to their unique factors. The U.S. Court of Appeals for the Third Circuit, however, remanded to EPA the FDF determination provision in the General Pretreatment Regulations (40 CFR § 403.13). The Court stated that "FDF variances for toxic pollutants are forbidden by the [Clean Water] Act." Therefore, EPA cannot grant a request for an FDF determination for a toxic pollutant regulated in a categorical pretreatment standard. However, since the opinion only addressed the availability of FDF determinations for toxic pollutants, such determinations for conventional and non-conventional pollutants regulated in a categorical standard remain available for facilities subject to pretreatment limitations. EPA will amend 40 CFR § 403.13 to comply with the Court's opinion in the near future.

Until the Clean Water Act can be amended to confirm the Agency's authority to make FDF determinations for toxic pollutants, EPA has another mechanism to address those existing indirect dischargers who would previously have been eligible to apply for FDF determinations from pretreatment standards. This mechanism has been discussed in the preamble of every effluent guideline promulgated since the date of the Court's decision. The alternative mechanism involves a rulemaking petition to the Administrator by the indirect discharger of other affected party to examine the factors and determine whether the pretreatment standard is properly applicable to the specific case or should be revised. The Administrator will consider these rulemaking petitions and determine whether a rulemaking should be initiated. If rulemaking is initiated, specific categorical standards could be issued for the specific facility as a separate subcategory. This mechanism involving a petition for rulemaking has always been available, but in the past EPA attempted to deal with such requests through FDF determinations.

The FDF determination regulations for direct dischargers, which are contained in 40 CFR Part 125, Subpart D were not affected by the Court's decision and still allow FDF determination requests for toxic, conventional and non-conventional pollutants. However, these provisions have been challenged, on similar grounds, in the U.S. Court of Appeals for the District of Columbia Circuit.

*Question.* Industry representatives have asserted to me that E.P.A.'s definition of pretreatment of pollutants which "pass through" a waste treatment plant (under Section 307 of the Clean Water Act, 40 CFR 403.3(n)) effectively guarantees that industry must duplicate a P.O.T.W.'s treatment. This is said to be the case under proposed Pesticide Effluent Guidelines (Federal Register Nov. 30, 1982, p. 54004) and proposed Plastic Industries Effluent Guidelines (Federal Register, March 21, 1983, p. 11841). Can you comment on the justification for E.P.A.'s definition of "pass through".

Response. The Third Circuit Court of Appeals, in its decision in the pretreatment litigation (*NAMF et al.* v. *EPA*, Nos. 79-2256, September 20, 1983) remanded to the Agency the regulatory definition of the term pass through (40 CFR § 403.3(n)). EPA had conceded that the challenged definition was promulgated without adequate notice and opportunity to comment. Thus, the Court remanded the definition on those procedural grounds, and declined to substantively comment on the definition. In accordance with this decision, EPA will publish a Federal Register notice announcing the suspension of the existing pass through definition. The Agency will then propose a new definition for comment, and subsequently promulgate it in final form.

Section 307(b)(1) of the Clean Water Act specifically prohibits the discharge of any pollutant that "passes through" a POTW. EPA's General Pretreatment Regulations, in implementing this statutory requirement, therefore included a general prohibition against pass through (40 CFR § 403.5(a)), and language defining what would constitute a pass through violation (40 CFR § 403.3(n)). This definition did not require industrial users discharging into POTWs to duplicate a POTW's treatment. A pass through violation would result only where an industry discharged a pollutant through a POTW into navigable waters in quantities that caused a violation of any requirement of the POTW's NPDES permit. In any event, most POTWs are not designed to remove toxic pollutants, whereas in contrast, pretreatment systems operated by industrial users of POTWs are designed to remove the toxic pollutants in that industry. Whatever removal is obtained by POTWs for toxics is only incidental to the POTW's treatment capability.

*Question.* The proposed pretreatment standards for the organic and plastics industries do not require pretreatment for toluene because POTWs adequately treat this material (Federal Register, March 21, 1983, p. 11853). Why then do the pretreatment standards for the pesticide industry require 99 percent pretreatment on the same chemicals?

Response. The proposed pretreatment standards for the pesticide industry and the organic chemicals plastics and synthetic fibers (OCPSF) industry were developed through independent analyses of the data from each industry. Pretreatment standards less stringent than direct discharge standards were proposed for toluene in the pesticides industry because of its use as a solvent in that industry and the resulting possibility that it could be discharged in very high concentrations. Pretreatment standards for toluene were not proposed for the OCPSF industry because our analysis indicated that POTWs could adequately control this pollutant.

The selection of pollutant parameters for pretreatment standards was based on information available at the time that these regulations were proposed. Since proposal, the Agency has been gathering additional data related to toluene as well as to other toxic pollutants for use in our analysis for final regulations. We will be reassessing the selection of pollutant parameters for both industries to ensure that we develop regulations which are consistent and reflect the pollutants of concern and the performance of treatment technology within each industry.

*Question.* Turning to the subject of groundwater protection, as you may know, I have introduced legislation on this subject in the form of a bill, H.R. 565, which would create a national groundwater commission. The commission bill now has been attached as an amendment H.R. 2867 the RCRA reauthorization act which recently passed the House. The 19-member commission would assemble and coordinate basic information on groundwater and make recommendations to Congress and the federal and state agencies on measures needed to adequately protect this vital resource. In testimony on May 26, 1982, E.P.A. Assistant Administrator for Solid Waste and Emergency Response Rita Lavelle testified that the groundwater commission was a "good objective but one that is already being effectively addressed." Ms. Lavelle then explained, "The Agency has determined that a groundwater policy is required, and this policy will include a review of major regulatory activities to insure that federal regulations are properly protecting groundwater . . . ." However, the E.P.A. has been promising to produce a groundwater policy since 1981, and still has not done so.

My question is what has the E.P.A. been doing, and what is the Agency doing now, on the broad issue of groundwater protection? Also, would it not, in fact, be helpful to the agency to have the recommendations of a broad-based commission on a sound, comprehensive policy to protect groundwater? (It should be noted that it has always been my intention that the work of a groundwater commission should complement, rather than hamper or delay, the work the E.P.A. is doing to produce a policy on this seemingly intractable issue.)

Response. With respect to your proposal of a national ground-water commission, part of your motivation appears to be concern about EPA's Ground Water Protection Strategy. I can give you Mr. Ruckelshaus' personal assurance that our efforts in this area are coming to fruition in the very near future. In fact, we expect to start briefing Congressional staff shortly. In this context, I would suggest that the Congress assess our Strategy and the public reaction to it to decide whether a commission would be worthwhile—commissions can sometimes be very useful in developing a national consensus, but all too often just produce voluminous unread reports. Of course, if a ground-water commission is established, EPA will do everything possible to help it in its work.

Mr. Roe. The gentleman from Louisiana.

Mr. Breaux. Thank you very much, Mr. Chairman.

I apologize for not being able to be here this morning.

I was particularly interested in your testimony. It is incredibly extensive—22 pages, plus about 15 pages of attachments. A great deal of work has gone into it.

However, I cannot find anything on my favorite section, section 404. Is it not high enough in importance to have made the statement?

Mr. Ruckelshaus. No; it is a very important section, Mr. Breaux.

Mr. Breaux. Why wasn't it mentioned at all in the testimony?

Mr. Ruckelshaus. Well, we are not making any recommendations for changes in that section. I did testify on that in the Senate. I would be glad to try to respond to any questions that you or other members of the committee might have about section 404.

Mr. Breaux. What did you say over there?

Mr. Ruckelshaus. The same thing I just told you. We are not making any recommendations for changes. There were a number of questions about it which I responded to.

My basic view on 404 is that we are having some problems, as I think you heard this morning from the Assistant Secretary of the Army, with some responsibilities in this area.

Mr. Breaux. I missed that.

Mr. Ruckelshaus. In implementing that section. I don't believe those are problems that cannot be overcome if both agencies, in fact, all the agencies with responsibility for some administration of 404, work cooperatively together, and do the best we can to resolve whatever differences we have.

It is a difficult task to give an agency like the corps of engineers and an agency like EPA joint responsibility for the administration of a sensitive statute or section like section 404. But as I say, I do believe that whatever differences we have can be worked out and ought to be worked out between the two agencies in order to make this section of the statute function properly.

Mr. Packard. Would the gentleman yield, please?

I think the gentleman may not be aware that the entire presentation this morning by the Assistant Secretary Gianelli was on section 404.

Mr. **Breaux**. That is a different department, right?

Mr. **Packard**. I didn't understand.

Mr. **Breaux**. I appreciate the fact that the corps said something about it. But I am disappointed EPA did not say anything about it. Their role in it is quite extensive and the conflict between the two is one of the problem areas for many.

A principal area of disagreement is between EPA's role and jurisdiction and Gianelli's position with regard to the corps.

Mr. **Edgar**. Would the gentleman yield?

I did sit through most of this morning's presentation. There was one question that was raised this morning that we should get some clarification on. That is they showed the whole process of procedures for 404, including EPA's right to veto a particular application. And testimony this morning indicated there was only one veto by EPA that they could remember.

Is that your understanding?

Mr. **Breaux**. Is this out of my time?

Mr. **Ruckelshaus**. I think that is right, Mr. Edgar. That is my understand.

Mr. **Edgar**. And if the gentleman would yield further, there was at least in the tone of the statement this morning the strong feeling, at least that I received, that most of the problems with the process of 404 were interagency problems, and administrative and regulatory problems.

They did not come armed with lots of legislative changes.

Mr. **Ruckelshaus**. I don't think the administration at this point is making any recommendations for changes in section 404.

Mr. **Edgar**. I thank the gentleman for yielding.

Mr. **Breaux**. I forgot what I wanted to ask now.

How much time do I have left?

OK. One of the points: although EPA has made probably only one veto in 18,000 permit applications, the fact that EPA has the right to veto an application certainly is going to affect it in its process toward a final decision. If I know somebody is going to veto it if I don't change it, the chances are I am likely going to change it according to what I think is appropriate before I submit it.

So the fact that there has only been one veto does not indicate the extensive operations that EPA has had. That is one of the things I want to focus on.

My area is probably more affected by the 404 permitting section than any other congressional district in the United States. Twenty-five percent of all the wetlands in North America are in Louisiana, my entire congressional district is a wetland under the definition.

So everything that is dredged and filled is affected by the need for a 404 permit. One of the things that I have always been concerned about in the 12 years I have been here is the fact that some have tried to make the 404 permit a wetlands management protection act.

It was never intended to do that. I think it is not designed to do it, and therefore, we have all these problems when people try and use it for that particular purpose.

One of the things I am concerned with is that EPA is really the only agency that reviews the permit applications that are submitted to the corps. Congress has given your agency, in effect, a veto right over that application.

The other agencies are required to comment if it affects their particular area of jurisdiction. But we have not given them a veto right.

Some of the areas that you are required to look at, with regard to that permit application, are areas that I am concerned EPA does not have a great deal of expertise in, by design. For instance, the Administrator is authorized to prohibit the specification, which is, in other words, the veto of a permit, whenever he determines after notice an opportunity for public hearings that the discharge of the materials in such area would have an unacceptable adverse effect on municipal water supplies, certainly something your agency has expertise in.

But shellfish beds is the another area. Then it goes on: fishing areas, which are as extensive as all the waters of the United States; wildlife areas, which, of course, are throughout the United States; recreational areas, of course, again, throughout the United States.

Is it not correct that your agency does not have a lot of expertise, by design, in wildlife areas, in fishing areas, and shellfish bed areas?

And if you feel that you do, please describe to the committee the type of people you have reviewing these permit applications in those particular areas, and what would their expertise be?

Mr. **RUCKELSHAUS**. Well, we have both at the headquarters and regional level people with backgrounds in the effects of pollution on wildlife, on shellfish, on fish. I think there are two kinds of questions you are asking.

One is do we have the kind of experience that we need to carry out the responsibilities assigned to us under the act. And second, should we be assigned those responsibilities.

I think there are two different questions. I do think we have people in the agency with the kind of expertise to look at those sort of issues. Recreation areas may be a somewhat different kind of——

Mr. **BREAUX**. If we assume, for the sake of argument, the Department of Interior is the agency responsible for wildlife management for instance, and if we assume that the National Marine and Fisheries Service is the agency presumably designed to regulate fish matters, would it not be more preferable to have those agencies looking at these particular areas as regards the potential effect of permit application than, say, EPA, which is not noted for that area?

Mr. **RUCKELSHAUS**. I think, in fact, they do that now. I think they comment on those.

Mr. **BREAUX**. The difference is they are asked to look at it. You are given authority to say, "we object to it, we are going to veto it." Your work in this area is significantly more involved and higher as far as effect than, say, National Marine Fisheries Service or, say, the Department of Interior.

Mr. **Ruckelshaus**. Well, presumably, our comments would have more effect to the extent that they might lead toward some administrative review and ultimate veto by the Agency. So to that extent, you are right.

They probably do have more——

Mr. **Breaux**. I am not trying to be argumentative with you. I am just trying to point out some problems that I have long perceived with the program.

We are telling EPA that you alone of all the agencies have the right to veto a permit application if it affects shellfish beds, or if it affects a wildlife area, or if it affects fishing resources.

We don't give that right to the agency that we charge with authorization and responsibility for managing those areas. I am asking you, isn't it more preferable to give them that perspective on the problem than, say, your agency?

Mr. **Ruckelshaus**. Well——

Mr. **Breaux**. And if not, why not?

Mr. **Ruckelshaus**. It may be, except we might then have four agencies with a veto power over the permit.

Mr. **Breaux**. As much as I would dislike that, isn't it more appropriate to have the agency charged with having the experts in those particular areas have that all-encompassing authority of a veto over a permit?

Mr. **Ruckelshaus**. I would have to think about it. I don't really quarrel with that. I guess I would quarrel with the question of whether you want to give one agency of the Federal Government the responsibility for issuing a permit and then multiple agencies the right to veto the exercise of that responsibility.

Mr. **Breaux**. That is not my argument. I see the point you make. The argument I have is that—and you recognize and I think you apparently agree with me, that your agency is not the agency assigned to be the experts in these particular areas of management and responsibility.

Mr. **Roe**. Would the gentleman yield?

Mr. **Breaux**. I would be glad to.

Mr. **Roe**. In this morning's testimony, there was a very clear concise statement made by Mr. Gianelli. He made the point of view that in the 404 lead agency situation that they, the corps of engineers, were faced with, that they were responsible initially in the borning of 404.

It was based upon the point of the fill and dredging as it related to the water resources of the Nation. That was the fundamental charge of the corps. When the situation—could equal, I guess, if you have a veto—authority was given to the EPA, as EPA evolved. The point that the gentleman from Louisiana was making earlier, what generated out of that over a period of time has been instead of the filling and dredging issue involved, that the statute has been bent by court decisions and by other interpretations to be wetlands protection act.

Mr. **Breaux**. And by Congress.

Mr. **Roe**. And by Congress, yes. The point was made, half a dozen bills have been introduced and enacted into law which further fortified the permit process we are following. But I think if the gentleman will yield further, you raised a very interesting question.

And I haven't gotten into the issue yet. But from my point of view, if the test of the entire water quality issue is based upon fishable and swimmable waters, then it would be indeed a high presumption that EPA has no expertise whatever in the fishable end of it. Would it not be then proper in that line of logic to say that no decision can be made by EPA if they don't have the expertise in fishable waters when they are not speaking to the fish—and I don't mean to be facetious.

So it seems to me what we are saying, if the underpinning of the EPA law is based upon fishable and swimmable waters, are we saying that some other agency should have a veto authority to determine what is fishable and swimmable?

Mr. **Ruckelshaus**. Mr. Chairman, I think what Mr. Breaux is alluding to was fishery and wildlife management as opposed to the impact of contaminants.

Mr. **Roe**. It didn't come out that way, or I would not have responded in kind.

Mr. **Breaux**. Just one more point. I think what the chairman has said is totally correct. What we are looking at is a problem, at least as I perceive it, that we have tried in many areas to make 404 a wetlands management, a Wetlands Protection Act.

The law continues—when you talk about fishing areas, it also says in parenthesis, "including spawning and breeding areas." That is really a management decision. That is fish biology type of work. The point I make is perhaps we have spread EPA very, very thin in some of these areas.

The other thing I think makes absolutely no sense with dredge and fill—I found out because of an actual situation in my district—and, again, it is Congress fault—is that it is a dredge and fill permit. I had a person, a company, out of State in Louisiana, right in the middle of the wetlands area dredging the hell out of the wetlands, just picking it up by truckload and putting it in another truck and toting it off to California, and putting it in a bag and selling it as fertilizer.

They didn't need a dredge and fill permit because they were not filling; they were just dredging. Makes no sense whatsoever. They were digging a big hole and leaving a canyon in the wetlands.

But because they were not dropping anything down, they were not filling, and therefore, didn't need a 404 permit. It doesn't make any sense at all. Whereas, if one guy took a teaspoon out of the wetland and dumped it on the other side of the canal, he would need a permit. A lot of problems.

Thank you.

Mr. **Roe**. The gentleman from Pennsylvania.

Mr. **Clinger**. Thank you very much, Mr. Chairman.

Thank you, Mr. Ruckelshaus, for some very excellent testimony. You have given the committee a lot to ponder over and consider. One question I had.

The top of page 2 of your statement, and elsewhere in the statement, you discussed "the administration's proposals." And during the 97th Congress the administration did formally submit to this committee some proposals for the amendments to the Clean Water Act.

But this year so far we have not received any such formal transmittal. I am somewhat uncertain about the situation this year. In your testimony you indicated that you had carefully considered whether to suggest or recommend some sort of pretreatment opt-out or waiver provision and that you rejected the pretreatment opt-out idea. However, in the attachment to your statement there is such a suggestion. I guess my question is: What is the status of the material that is attached to your statement?

Is it, in fact, the administration's proposal?

Mr. RUCKELSHAUS. The administration's proposal, to the extent it is specific, is embodied in my statement. And to the extent that statement conflicts with the original administration proposal, it is the proposal as embodied in my statement.

Simply because I did not address other administration proposals does not mean that those are not still the administration's position. They just were not the ones I wanted to highlight in my statement, because the ones I highlighted seemed to be the most important, and seemed to the administration to be the most important.

They were the ones that evolved out of the discussions we had with the Senate and have already had with Members of the House as being the most important ones for this committee to address.

Mr. CLINGER. So to the extent that provisions are suggested in your statement, that does represent the administration proposal?

Mr. RUCKELSHAUS. Yes. The administration, Mr. Clinger, still is interested, as am I, in some sort of pretreatment provision, to use that as an example. And when I testified earlier in the Senate, I suggested that I had had difficulty over the then 3 or 4 weeks since coming into office, coming up with a pretreatment recommendation that really made sense.

I discussed it with the administration. I discussed it with members of the Senate committee, with my own staff.

We went back after the Senate testimony and tried over again to come up with a proposal for pretreatment that would both achieve the goal of protecting the sludge, protecting the sewage treatment system itself, and of protecting the receiving waters, while at the same time provide some more cost-effective way for indirect dischargers to meet those requirements.

It has been very difficult to do, as I suggested. It has been very frustrating to do. The problem is we do not have the water quality standards from which we can work back from the end of the pipe into the plant, into the sludge, and back to the indirect discharger, and harmonize or fine tune a system that would avoid the over- and undertreatment problem that I mentioned.

Mr. ROE. Would the gentleman yield?

Again, we worked together in 1974, so we don't have to make fidelity relationships. But one of the problems—we are now in the process of writing a piece of legislation that you are going to have to administer in due course, right.

I think what the gentleman is leading up to, what is frustrating us on this pretreatment issue, is that in candor the Agency has not developed the standards.

Now, we have had reams of testimony. We don't go into legislation lightly, as you know.

And there are people here who understand the intricacies and the vicissitudes of this legislation. And one of the issues is how can we say to a manufacturer that you have got to do—let's take the plating industry. You have got to do certain basic things in a time certain, when our regulations are not completed. I know in that area we have done some more advanced work than others.

But, if you like, in that plating industry to take General Motors, or one of the companies that multitudinous types of processes along the line, and the committee is trying to decide do we strengthen everything on pretreatment to get the heavy metals and whatever out of the sludge so the sludge can be used for other organic uses and so forth—is that too expensive? What direction do we go? Or we are concentrating the sludge with the heavy metals and everything into it because we have not perfected the pretreatment issue yet, and consequently we cannot use that material; we cannot dump it in the wetlands or into the ocean for the problems involved.

So we are at a stalemate. One of the projections that has come aboard in part of the testimony has been based upon the point of view maybe what we should do, instead of giving a date certain, 3 years down the road is to say that these standards have to be met and, that as we develop categories, the different standards, the different elements that they be implemented with the time certain, 3 years from that point, if you follow me.

The problem, however, we are faced with is that companies such as General Motors, one of the larger companies, can come back and say we have seven different processes going throughout plants. We are trying to put something into place that is going to affect it and start the process of cleaning up those wastes now, but if we are lacking the information from the Agency, can you force us to go and spend tens of millions of dollars to achieve the goal when we don't have the facts that the Agency wants.

Is that coming along the line you are thinking about?

So I think when we are trying to write a law, we have in candor, we have on this side the environmentalists—they always think I am mad at them. I am not. We are trying to solve some of their problems.

They have been the gadflies. They have been darned important in the whole process. But they are looking for purity here and over here we cannot get the answers to move it. What do we say to the American people?

Do we stop now and wait until the Agency catches up? I don't mean again to be facetious. How are we going to put a law together that is going to deal with these issues if we don't have the facts to deal with.

Mr. Ruckelshaus. Well, you have asked a number of questions, Mr. Chairman.

I guess my response in terms of the direct question on pretreatment effluent guidelines is that we are well along the way toward preparing these effluent guidelines. You mentioned electroplaters.

We do have effluent guidelines for electroplaters. There is a problem associated with the so-called integrated plants where they have several processes for which effluent guidelines would be applicable, where they are staggered in terms of their being finally prepared.

We will just have to work through each one of those facilities, try to avoid jerking those plants around so that they have to meet one set of standards today and another set of standards once the new guidelines come out.

But we have ongoing now under a court decree, under a court order, the preparation of sufficient effluent guidelines to meet all of the requirements of every integrated plant I know of within time.

Now, the question is, do we go forward with that program that has been in place since 1972, or do we shift to a different kind of pretreatment program which, as I suggest, under the best of circumstances would take us 2 or 3 years of additional study, primarily in the toxic substance program and the sludge program, to get in place before we get on with a pretreatment approach.

You have expressed, I think, your own concern about the time which it has taken the Agency to get to this point. I share that frustration. I think the American people have that frustration. What I am suggesting is that we go forward with this current pretreatment program that has been in place now since 1972.

We have to work through this task force that we are creating, involving all of the various people, various publics involved in the equation, and see where we can get with it.

We should not at this point change the law as it relates to pretreatment, but leave it as it is and let us try administratively to work our way through it. The alternative is to delay for a couple of years.

I think under the circumstances that is asking the Congress a lot.

Mr. ROE. The gentleman from Pennsylvania.

Mr. CLINGER. Thank you, Mr. Chairman.

Just following up on that. As I understand it, under the modified consent decree, EPA is under direction to complete all of the pretreatment standards by June 1984. Can you give us either now or for the record an indication for which industries EPA will not have final BAT regulations by that date?

And also, some indication, if there are such industries, why the deadline could not be met in those instances?

Mr. RUCKELSHAUS. Let me make sure I give you accurate information. We will have most all of them by that deadline. November of 1984, I guess, is the date we have had to stretch one or two of them out to.

We can give you a complete list of who those industries are, and where they all stand.

Mr. CLINGER. I would appreciate that, if that could be submitted for the record.

Mr. RUCKELSHAUS. We will do that.

Mr. CLINGER. Thank you.

[The following was received for the record from Mr. Ruckelshaus:]

*Question.* Status of the effluent guidelines, including categorical pretreatment standards:

Answer: Regulations for 20 industrial categories have been promulgated (18 of these are subject to categorical pretreatment standards); regulations for 6 other industrial categories have been proposed and remain to be promulgatged (all 6 will be subject to categorical pretreatment standards); and regulations for 3 more industrial categories remain to be both proposed and promulgated (2 of these will be subject to the categorical pretreatment standards).

The last category to be promulgated is currently scheduled for November 1984.

Mr. **Roe**. The gentleman from New York.

Mr. **Nowak**. Thank you very much, Mr. Chairman.

Welcome, Mr. Ruckelshaus.

Let me just follow up and be clear about this pretreatment. I take it that your general viewpoint is that there should not be any legislative changes to the Clean Water Act with regard to pretreatment, at least at this time.

And you feel that the pretreatment implementation review task force, which you have mentioned here on page 8, will come forward with those suggestions in the future?

Mr. **Ruckelshaus**. Yes. What we are trying to do is handle all of these problems that have been raised, as many as we can, administratively. It could be that we will find there are simply very large inequities that we cannot handle administratively, and we would have to ask the Congress for some relief.

I don't know of any yet. I don't know of any pretreatment program that everybody is going to buy off on. We have talked to all kinds of different groups about these programs.

They all raise problems depending on the group you are with. And the one we are currently embarked on, the one that has been in place for several years, has many detractors, including me, in the ideal world.

But I think we are far enough down the line toward trying to implement it that we ought to give it a fair shot. And the best way I know how to do it is to convene this group of people representing all of the various groups interested in this, and see if we cannot work our way through it administratively.

Mr. **Nowak**. You will have a representative of the municipalities that are involved in the program on that task force, right?

Mr. **Ruckelshaus**. Yes. We will.

Mr. **Nowak**. Do you have a date as to when this will be organized and a deadline for any type of report?

Mr. **Ruckelshaus**. The hope is to complete our work by next spring. The group is essentially established now.

Mr. **Nowak**. Will they have a formal report that this committee will be able to look at?

Mr. **Ruckelshaus**. We would be glad to share the results of that work with the committee.

Mr. **Nowak**. I think it very important.

Let me ask one more question regarding this—I wonder if you could elaborate, if you found that there could be assurances that the so-called alternative local pretreatment program would provide the same level or timeliness of protection for the treatment plant operations themselves, and, of course, the receiving waters?

Mr. **Ruckelshaus**. I am not sure I understood that question.

Mr. **Nowak**. There have been suggestions that so-called local standards should be established for a pretreatment program. I am sure that would be an alternative your task force would be looking at.

Mr. RUCKELSHAUS. The pretreatment waiver provisions.

Mr. NOWAK. Right. I think many people have concerns that there would be different standards in different areas, and about what the results would be, both for the operators of the plant and, of course, the receiving waters.

Mr. RUCKELSHAUS. Well, that was the provision that was originally suggested by Senator Chafee in the Senate and that the administration brought foward. It would take a change in the law as I currently understand it.

We do not have the authority to grant pretreatment waivers under existing law. So the task force, while it may decide to make some recommendation to Congress or to the administration, and through them to the Congress, we do not have any authority to do that administratively.

Mr. NOWAK. But that would be looked at in this review, I take it?

Mr. RUCKELSHAUS. Yes. I am sure—I would hope that this group, if it came to the conclusion that this was a better approach for the country to take in dealing with the problem of pretreatment, that we would feel free to recommend it.

Mr. NOWAK. One other problem area for us, especially in the Northeast and Midwest, has been, since 1981, the elimination of combined sewer overflows as an eligible category. And another area in which there are concerns, one which you talked about later in your testimony, is nonpoint source pollution. There have been some that have suggested this is a big problem. And unless combined sewer overflows become eligible once again, we may have a real problem with taking care of those combined sewers, especially in the older sections of the country where much of it has existed for many, many years.

I was wondering about your position on whether or not that could be considered eligible again.

Mr. RUCKELSHAUS. We are not recommending it at this time, Mr. Nowak. There is the authority, even after October 1 next year. Starting with fiscal year 1985, there is authority for the Governor to use up to 20 percent of his allocated funds for combined sewer overflow problems. With the approval of the EPA Regional Administrator, they can even dip into the allocation more broadly for that purpose.

The total bill, for the combined sewer overflow problem in 1981 was some $37 billion. When the Congress and the Administration at that time looked at the priority needs in the country, while there were some areas where combined sewer overflow would be fairly high up on the priority list, by and large the completion of the sewage treatment facilities was a higher priority. It was, therefore, decided to focus the Federal moneys into the completion of those facilities starting in fiscal year 1985, rather than continue the eligibility of combined sewer overflows.

Mr. ROE. Will the gentleman yield?

Mr. NOWAK. Yes, I will yield.

Mr. ROE. You know, it is so exasperating. We have listened to a year and a half of testimony from people all over this country. And now everybody, even some of our friends, come in and says one of the things we have to look at is that this nonpoint source situation is creating about 50 percent of the pollution we are affected with. Recognizing it would be an enormous task. Some of the testimony this morning indicated 40 percent of that came from agricultural lands.

What puzzles me, in the city of Paterson, we have combined sewers. If we don't make it mandatory that all people who are producing toxic wastes or heavy metals remove their material, those pollutant materials, at the plant source, take it out before it gets into the system, then we are just absolutely wasting the taxpayers' money, if we don't make that mandatory.

The reason being is that immediately when we have a storm, if they are putting part of that material through the combined sewer lines to go down to the Passaic Valley Sewer Plant, the minute we have a heavy rain, it scours out all of those lines and puts it right back into the Passaic River.

Today we had some testimony given from the people from St. Louis who spoke in that same direction on that issue. They said, "No, we don't think you should go ahead and take those materials out, because the four types of categories we have in St. Louis—we can remove better"—the example the gentleman gave was one plant produces about a pound of copper a day, in 170 million gallons a day—you could not even discern or test for it when it got to the influent of the plant or the effluent from the plant.

It seems to me if we are talking about cleaning up pollution, and I don't quarrel with your $32 billion, or whatever you try to do, all at once. But there ought to be some way we don't kid the American people and tell them we are cleaning it up if we are not, if we are not making those decisions.

There aren't any two places in this country identically the same. Maybe as we are trying to break into ground, we should be more flexible and say to regions of the country, why can't we analyze what this regional problem is to get to the goal we are trying to get at.

Mr. RUCKELSHAUS. Well, I certainly cannot quarrel with that, Mr. Chairman. I think that in fact there is some flexibility for the Governor to use, as I say, up to 20 percent——

Mr. ROE. I sat in on that conference. The battle we fought was extraordinary over that. You know how that came out? There was too much power on one side that came back and said, "We will provide $320 million, and we will work that out so that if those pollutants were to affect necessary tour areas, we can deal with it." But it didn't speak to the issue of when it affects a water supply system. It left that blank. They would not go with that issue.

All I am trying to say to you is from a pragmatic, factual point of view, unless we deal with the combined sewer issue on an equal basis in a system, we are taking the heart out of one area and saying that doesn't count—you cannot deal with that. And we are spending hundreds of millions of dollars, almost $1 billion, on the Passaic Valley sewer plant handling those communities in northern New Jersey, with the ostensible view of cleaning up the pollution in the rivers and the tributary streams of the Passaic River, going out to that bay, and we are not going to cure that unless we legitimately deal with those combined sewers.

All I am simply saying is that if we are willing to spend $800 million to $1 billion to service that area, isn't it only right that we consider a major pollutant being those combined sewers?

Mr. **Ruckelshaus**. Absolutely.

The question is whether we should, therefore, make the combined sewer overflow problem one that is eligible for this $2.4 or however many billions we appropriate every year of Federal money. And are there other ways of getting at the same problem?

I don't for a minute say we should pour money into a treatment plant when the big problem in the area is combined sewers or something else.

Mr. **Nowak**. I think the point we are trying to make is that we want to give that flexibility so that the States can start making these kinds of decisions. And if that decision happens to be that in several large cities where they have large amounts of combined sewers, that they wish to do it, without hurting some other part or make the tough decision on the priorities, let's give them at least the way they can do it, so that they can start to accomplish this nonpoint—if they already have taken part of their other problems in building treatment plants ahead of time.

And I think that that is what many of us on the committee are looking for some relief. And I hope that in your study of pretreatment and nonpoint source pollution, you will take another look at that. Because I think it is going to become a bigger and bigger issue, and we have more and more Governors calling about this problem. And I hope that we can look at what it will take, and I think it is legislative changes, or also some commitment by EPA to make sure this problem can also be handled to get the highest quality out there we can.

Thank you very much.

Mr. **Roe**. The gentleman from California.

Mr. **Packard**. Thank you very much, Mr. Chairman.

It is a pleasure to have Mr. Ruckelshaus with us this afternoon.

Could you please give us an update and a status report on section 301(h), the ocean discharge waiver program. What is the current status of the waiver applications submitted under the 1977 amendments and the Agency's June 1979 regulations?

Mr. **Ruckelshaus**. We have—I can certainly give you the exact—we have received 207 requests. I can give you the exact numbers of those we have acted on, those we have approved, those we have disapproved, those that are still pending. There are a lot of issues involved in the ocean discharge waiver provision, some of which we have resolved, some of which we have not.

Mr. **Packard**. Perhaps you can provide for the record those figures as well as what the results to date have been on the changes to section 301(h), which were made by section 22 of the 1981 Municipal Wastewater Treatment Construction Grant Amendments, as well as the length of time, the personnel, and the dollars that it has taken to process each of these applications on an average. I think that would be helpful for the record.

Mr. **Ruckelshaus**. I would be glad to do that.

[The following was received for the record from Mr. Ruckelshaus:]

*Question.* What were the results of the 1981 statutory amendments to section 301(h) and what are the resources needed to review an average 301(h) application?

Answer. The 1981 statutory amendments extended the deadline for filing 301(h) applications to December 29, 1982. As a result, 137 new applications were filed, which are in addition to the 70 applications received under the original statutory deadline.

The Agency's original 301(h) regulations were promulgated in 1979 and contained, among other things, prohibitions against 301(h) waivers for 1) the discharge of effluent receiving less-than-primary treatment; 2) the discharge of sewage sludge; and 3) communities already achieving secondary treatment. The 1979 regulations were challenged in court, and the court upheld the regulations with the exception of the three prohibitions referred to above. *Natural Resources Defense Council* v. *EPA*, 656 F.2d 768 (D.C. Cir., 1981).

The 1981 statutory amendments addressed two aspects of the court's decision. First, statutory language was added to section 301(h) confirming that communities achieving secondary treatment were eligible to seek a 301(h) waiver. As a result, communities may now propose in their 301(h) applications to reduce their treatment from the levels currently being achieved. Second, Congress disagreed with the court decision as to sewage sludge by adding statutory language prohibiting waivers for the discharge of sewage sludge. The result of this change is that sewage sludge remains ineligible for a 301(h) waiver. The 1981 statutory amendments did not address the court's decision with regard to less-than-primary treated effluent. As a result, the court's decision on this issue stands, and communities may request a waiver based on a proposal for less-than-primary treatment.

In addition to the above, the 1981 statutory amendments deleted the requirement that applicants have an existing discharge into marine water. As a result, communities which presently discharge into freshwater may submit an application for a 301(h) waiver if they propose to relocate their discharge into marine waters. However, it must be emphasized that this change does not mean that 301(h) waivers apply to freshwater; the proposed discharge to which the 301(h) waiver applies must still be into marine waters. Finally, the 1981 statutory amendments to section 301(h) deleted section 301(h)(8) which dealt with the use of Title II Funds. The legislative history underlying the deletion of section 301(h)(8) indicates that this was done because section 301(h)(8) was believed to be redundant, rather than being a substantive change. See, H.R. Rept. No. 970, 97th Cong., 1st Sess., 16 (1981); 127 Cong. Rec. H9515 (daily ed. Dec. 14, 1981).

Agency regulations responding to the lawsuit results and the 1981 statutory amendments were promulgated in June 1982. In addition, further regulatory amendments simplifying the application and regulatory requirements, especially for small applicants, were promulgated in November 1982 based on the Agency's experience in implementing the 301(h) program.

Based on our past exeperience with reviewing 301(h) applications, we estimate that the average processing cost per application would be $51,000 in contract costs and would require on average about one person/years. These figures do not include post-waiver activities such as compliance monitoring. Of course, there may be considerable variation from this average figure for a particular application depending on such things as the size of the discharge, sensitivity of the receiving waters, and complexity of the issues raised. The actual calendar time to complete review of an application would depend on the resources available for application review, whether the application contains all necessary data, and whether EPA's decisions are appealed.

*Question.* What is the status of the 301(h) program?

Answer. In response to the December 1981 statutory amendments to section 301(h), the Agency promulgated amended 301(h) regulations in June 1982. Further regulatory amendments were promulgated in November 1982; those changes drew on Agency experience with the 301(h) program and simplified and clarified the regulations, especially for small applicants.

The Agency received 70 301(h) applications under the original 1979 deadline and an additional 137 new applications were filed in response to the December 1981 statutory amendments, which extended the applications deadline to December 29, 1982.

Responsibility for 301(h) decisionmaking originally was retained by EPA Headquarters, with tentative decisions being signed by the Administrator. Headquarters has made 25 tentative decisions on the 30 largest applications filed under the original statutory deadline. Headquarters also will make the tentative decisions on the remaining 5 of these 30 applicants; these 5 are now undergoing review. Responsibility for 301(h) decisionmaking has now been delegated to EPA's Regional Offices, and all EPA Regions with 301(h) applicants had accepted delegation by June 1983. The

Regions have made 40 tentative decisions and 16 final decisions following delegation.

Of the 65 tentative decisions made Agency-wide, 22 were approvals and 43 were denials. Of the 16 final decisions made, 4 were approvals and 12 were denials. Table 1 presents a breakdown of these decisions according to whether the application was filed under the original 1979 deadline or the new 1982 deadline. The applications for which decisions have not yet been made are in various stages of the review process.

The review process involves a careful case-by-case scrutiny to assess compliance with the 301(h) criteria. As part of the review process the Agency has utilized the services of an outside contractor specializing in water resources and the marine sciences to prepare a Technical Evaluation Report (TER) which analyzes in detail the technical and scientific issues presented by the application reviewed. The application and TER are then scrutinized by Agency experts, including highly qualified and experienced personnel from the Office of Research and Development, in order to determine if the proposed discharge meets the applicable statutory and regulatory criteria. Decisions are announced in tentative form, with the opportunity for public comment and involvement prior to final Agency action.

In determining compliance with the balanced indigenous population requirement of section 301(h)(2), EPA carefully considers the potential impacts of toxic pollutants. Section 301(h) requires waiver recipients to control toxics introduced into their treatment works by enforcing applicable pretreatment requirements and by taking steps to control nonindustrial sources of toxics. Tentative waiver approvals announced to date have required as a condition of final approval that these toxics control programs be revised as indicated in the tentative decision document to assure adequate control of toxics. In this process, EPA uses applicable water quality criteria, water quality standards, and Food and Drug Administration action levels in determining, among other things, whether the applicant's discharge will allow for a balanced indigenous population of marine life. In assessing whether water quality criteria will be excessed, we use the critical initial dilution of the proposed discharge, which is, in essence, the "worst case" dilution. In addition this analysis is done utilizing toxics detected in the current discharge and thus does not reflect the additional toxics removal which would result following the applicant's implementation of proposed improvements to the its treatment of categorical pretreatment requirements. Where this conservative analysis indicates the potential for the discharge to exceed water quality criteria, we require as a condition of final waiver approval that the applicant take steps to assure water criteria will not be exceeded. In those instances where toxics cannot be controlled to levels such that marine life would be protected, the application would be denied.

Our 301(h) regulations contain additional criteria for the protection of saline estuaries regarding benthic impacts, bio-accumulation, and migratory pathways (40 CFR 125.61(c)(4). In addition, of the 45 tentative decisions involving estuarine discharges, 36 were tentative denials. Of the nine tentative approvals for proposed estuarine discharges six were in Alaska and all represent very unique conditions.

Section 301(h) applications raise many complex and difficult state-of-the-art issues regarding the fate and effect of pollutants in the marine environment. In addition, because most applicants are proposing changes from their current treatment levels, the review process necessarily requires the use of predictive analyses in determining compliance with the 301(h) criteria. The 301(h) applications present voluminous and complex data on the discharges' potential impacts which must be carefully scrutinized as a whole in order to determine compliance with the 301(h) criteria. For example, because of the wide variety of natural variability associated with each biological parameter, those measurements which can be expected to produce the most sensitive assessment of possible discharge-related impacts may be heavily relied on by the applicant, while others, because of their low sensitivity to impact and/or high natural variability, may not be as important to the overall assessment. Similarly, collection of field data by applicants necessarily relies on sampling of the biological populations selected for study, with the samples being used to represent the condition of the population as a whole. The validity of such sampling will depend on such factors as sampling frequency. location, and collection techniques, and the results obtained may be reported or analyzed in a variety of possible ways. Given the complexity of the real world and the large number of variables involved, there simply is no such thing as absolutely conclusive data. However, by considering all of the data in the application as a whole and by using other available scientific information, it is possible through the application of expert analysis to reach technically sound decisions as to the potential effects of the discharge.

TABLE 1.—NUMBER OF 301(h) DECISIONS TO DATE

| | Tentative approval | Tentative denial | Final approval | Final denial |
|---|---|---|---|---|
| 1979 applications | 21 | 10 | 4 | 1 |
| 1982 applications | 1 | [1] 33 | 0 | [1] 11 |
| Total | 22 | 43 | 4 | 12 |

[1] Most of these denials were based on State nonconcurrence with the application or because the discharge would be into waters exhibiting freshwater characteristics.

Mr. PACKARD. Also, we note that the administration proposes amendments to section 361(a) of the Clean Water Act's thermal discharge variance provisions. I have several—I have two major powerplants in my district, and they discharge into the ocean, or into waters that ultimately discharge into the ocean. I would be interested in knowing what your attitude is on these variances, whether you feel that thermal discharge is a significant form of pollution and what your recommendations are in terms of dealing with it.

Mr. RUCKELSHAUS. The administration, as you know, suggested deletion of the word "indigenous" from the aquatic populations to be protected. Frankly, the Agency doesn't see—I have discussed it with the staff—that that is that big a problem. The Agency has tried to interpret indigenous in such a way that it would encompass a fairly large population of aquatic life so as to be able to give relief where warranted.

I guess the major problem is with new sources, and whether it is necessary to build cooling towers in the construction of the new sources. But if the Agency issued new source performance standards, that probably would be necessary anyway. I don't know that dropping the term "indigenous," so that you simply have to protect a balanced fish population—which might permit heated water discharges, would give the relief anyway under the new source performance standards.

Mr. PACKARD. Is it your judgment that there are sometimes some pluses and improvements for the fish and wildlife over and above what the original was by thermal discharge?

Mr. RUCKELSHAUS. I suppose that depends on your definition of improvement. If by improvement you mean warmer water fish might be happier near warmer water discharges, yes. On the other hand, if we are trying to preserve the biota of the stream as we find it, then we may change it by changing the temperature of the water that is discharged.

Mr. PACKARD. In regard to EPA's removal credit approach, what is your opinion or your judgment of that whole approach?

Mr. RUCKELSHAUS. Well, I think it is a good approach. And I think that is one of the things that the pretreatment task force really ought to look at—how can we improve that, make that more attractive to people, work better. The idea is to give some sort of credit to the indirect discharger for whatever is removed by the publicly owned treatment work itself.

One of the problems the chairman brought up is what happens in storm periods, if you have storm water sanitary sewer combinations, where if you don't remove the toxics from the indirect discharger, the storm water comes along and you bypass the treatment plant. Even though the treatment plant itself may remove a high percentage of the toxic material through secondary treatment, we still may lose some through the problems of combined sewer overflows.

On the other hand, if, as we have found, well operated secondary treatment plants do remove a high percentage of some kinds of toxics, and if we can translate that back into a removal credit system that gives some credit to the indirect dischargers so they don't have to do more than is necessary to protect the three things we are trying to protect—the sludge, the treatment plant and the receiving water—then we ought to make the removal credit system work. So far it hasn't been very attractive to them.

Mr. PACKARD. Do you see the administrative heartaches inherent within that process as being one of the major stumbling blocks?

Mr. RUCKELSHAUS. It is a problem, yes. I don't know—there are a lot of administrative problems in this whole pretreatment area.

Mr. PACKARD. One last question, Mr. Chairman.

You addressed the nonpoint pollution problem. And that is a major problem we are struggling with.

I think you indicated in your testimony that you have a report that will be prepared and be ready for presentation. Would you give us an update on the scope of that report, when it is scheduled to be released and to whom it will be released?

Mr. RUCKELSHAUS. We would be glad to share with this committee information that we have as a result of work we do on nonpoint source pollution, or for that matter any other problem.

We are well along the way toward developing guidance on nonpoint source problems for the States. We would try to include in our fiscal year 1985 section 106 grants to the State agencies some nonpoint source requirements, so that some of those funds are directed toward nonpoint source problems. That again would be consistent with the guidance that we are about to release this year. We will then be able to work with the States under that guidance to try to have an integrated Federal-State program.

As the results of those studies and efforts are completed, we certainly would share them with the committee or with anyone else.

Mr. PACKARD. Do you sense one of your major problems with that whole process of Federal guidelines is the preservation of local control?

Mr. RUCKELSHAUS. It could be. One of the things that concerns me about a large Federal nonpoint source program is its potential infringement on land use kinds of controls that are traditionally local in nature.

Another thing that concerns me is if we get into a major grant program, the problem of people starting to queue up, line up, waiting for Federal money to become available before they do anything. We have put a fairly large bill on the total nonpoint source program of the country. We could continue the discussion, in my third term as EPA Administrator 12 years from now, of where we are going to get the money to fund solutions to all the nonpoint source problems. We are right where we were in the sewage treatment plant funding issue. The chairman and I had this discussion 12 years ago on sewage treatment plant funding and here we are again.

Now, we have had some States that moved ahead and are doing some good things on nonpoint source controls. I think we ought to encourage them to continue to do that, to try to get other States to do the same thing, and, to the extent possible, keep the Federal role to a technical advisory kind of position.

Mr. **Packard**. I have no other questions, Mr. Chairman.

Mr. **Moody**. Mr. Chairman, I have some questions, but there is a vote on.

Mr. **Roe**. Do you have time for us to run a vote and come back?

Mr. **Ruckelshaus**. I would be glad to wait.

Mr. **Roe**. Suppose we recess for 10 minutes while we go and vote. We will come right back.

[Recess to vote.]

Mr. **Roe**. The committee will reconvene.

We were about to hear from Mr. Moody of Wisconsin.

Mr. **Moody**. Thank you, Mr. Chairman.

Mr. Ruckelshaus, during the break, we discussed briefly the subject of CSO's but for the record, I would like to ask you again. If we all agree that we want to maximize the impact of scarce pollution control dollars, and we agree that the effective use of dollars may differ from place to place, why would we want to put any artificial—I will use artificial to editorialize—limits on how a State or local agency spends those dollars? If CSO cleanup yields more bang for the buck than using the money somewhere else then why not free up the local governments, to use the money as it sees fit? This should be particularly the administration that came in on the thesis that local government often knows best.

Mr. **Ruckelshaus**. Let me make two points, Mr. Moody. No. 1, I think the origin of the removal from eligibility of combined sewer overflow funding back in 1981 was the whole issue of how much money is going to be available. When I was first at EPA, combined sewers were not eligible for funding. It was put in as an eligible element for funding during the middle seventies, and then was taken out again in 1981. I think that is the origin of it.

Now, I think your question is a perfectly valid one. Let me tell you the way the program currently works. Each State is allocated a certain amount of money on the basis of a nationwide formula and may use any or all of that money for combined sewer overflows. Beginning in 1985, the Governor, acting usually through his State pollution control agency, can use up to 20 percent of the funds allocated to his State for projects like combined sewer overflow. He is not restricted from using all of that money for combined sewer overflow. In addition, he can go to the EPA regional administrator—usually that is who they would go to—or his State could, and say, "A project for combined sewer overflow is far and away a more cost-effective way of reducing pollution in my State than is allocating this money for sewage treatment plants or whatever," and if the EPA regional administrator agrees with him, he can use additional money over and above the 20 percent.

So there isn't a total restriction now on the use of those allocated funds for combined sewer overflow projects. And whether you would want to make them just as eligible as everything else is the kind of issue that was addressed by the committee in 1981. It will be the kind of issue we will address in the study we are going to undertake in the next year, leading up to the reauthorization of the sewage treatment plant grant program. And it may be that we would decide there is a better way to get at it.

But on your central premise, which is should we be spending money where we get the most bang for the buck, I can't disagree with that.

Mr. MOODY. All right. So they are not totally restricted, but they are under some handicap at the present time, you would agree.

Mr. RUCKELSHAUS. That is right.

Mr. MOODY. After 1985, the study group you are talking about is addressing the issue of what we do beyond 1982.

Mr. RUCKELSHAUS. That is right, after the current program runs out.

Mr. MOODY. So we have a chance, if people can agree, of widening that window for CSO?

Mr. RUCKELSHAUS. Yes.

Mr. MOODY. My next question has to do with the issue of common lawsuits versus the permit process. We, in Milwaukee, went to the Supreme Court to argue that Clean Water Act was so thorough that it preempted common lawsuits. You are probably familiar with our situation.

Mr. RUCKELSHAUS. Yes.

Mr. MOODY. That decision meant we could get on with a much more rational process of cleaning up our water. Since we were under a previous court order to clean up our water we didn't quarrel with goal. However, we did quarrel with Judge Grady of Illinois' particular interpretation of how we should reach that goal and under what kind of fast track. We felt the common law suit would have imposed a ruinously fast timetable. Now I understand the Senate has attached an amendment to open up this matter again. If passed, people who don't like the permit process could always take their neighbor from an upstream State to court and try to settle it on a common law nuisance basis.

Do you have a position? Although we are very biased on this subject, it seems to me the Senate amendment throws into a cocked hat all the procedural safeguards which the whole clean water permit process is designed to handle.

Mr. RUCKELSHAUS. I can put back on again, Mr. Moody, my Justice Department hat. When I was first in the Government, I was Assistant Attorney General at the Justice Department. It seemed to me as a lawyer that once the country decided that the way it was going to handle water pollution was through the Clean Water Act, for it to then provide another whole set of remedies which invited an individual, municipalities or whoever to get the courts into deciding similar questions along parallel paths using an entirely different set of criteria that have grown up through the common law of the country simply didn't make sense. The Supreme Court correctly interpreted the existing law that the Clean Water Act preempts the field in this area. And that is the way it ought to remain.

We do have a very comprehensive national program for dealing with problems involving pollution and clean water, and that ought to be the law of the land. We ought not to have a separate, in effect, set of laws or remedies that move up through the courts, often in parallel, sometimes in conflict with that Federal law.

Mr. MOODY. I am very glad to hear you say that. Does the administration have a position similar to what you have just enunciated?

Mr. RUCKELSHAUS. The administration's position is the same as the one I have just announced. It was announced by the assistant attorney general—I don't know whether it was in this House or the Senate—in testimony that was the same as what I said, maybe not quite as eloquent. [Laughter.]

Mr. MOODY. All right. I am glad to hear that. I am hoping, Mr. Chairman, that we will not put that kind of amendment on here because it opens up such a Pandora's box.

The third question, Mr. Ruckelshaus, has to do with the BAT versus BPT issue, which is very much on our minds. We have been hearing a lot of very high-quality testimony on both sides. Both sides can sit where you are sitting and make quite a compelling case. On the one hand, the chemical companies and some others have explained that, in some instances to achieve BAT standards, will be expending inordinate amounts of money.

If I may for the record just read an excerpt from Miller Brewing Company that is in my district, it says "Each Miller waste treatment plant is equivalent to one required for a city of 535,000 people." This is one plant. "The design efficiency to remove solids based on BCT is 97.5 percent and is achieved at a capital cost of $370 per pound of solid removed. The cost under BAT to achieve only 1 percent more, raising it to 98.6 percent solid removal, would cost $3,900 per pound removed."

The punch line is obvious. Thus, the incremental cost to remove additional pollutants has dramatically increased while the pollution removal itself has only marginally increased.

This is just one of, I suppose, many examples. Now, on the other hand, the environmentalists correctly point out that when we are talking about toxics, cost benefit calculations like that may not be applicable. We don't know what downstream costs of some toxics are, particularly when they get into the food chain and the environment. It seems to me this is largely an issue of science.

On the one hand, the chemical companies in some letters and testimony I have seen, say we have the scientific capacity to measure these toxics and remove them. And the environmentalists are basically saying it is still not scientifically that sound. Your testimony indicates in a parallel way that delays might be inordinate if we move to a scientifically case-by-case approach with cost-benefit-type calculations. Can you elaborate your stand on that?

Mr. RUCKELSHAUS. Well, the specific example you mentioned is the kind of example that is often used to argue against moving from BCT-BPT up to a higher level of technology-based treatment. In that particular case I guess I don't know whether we have a BAT standard, or effluent guideline for breweries. It is my understanding we don't. There may be some special circumstance there I am not familiar with.

At any rate, it is possible that moving from one level of treatment to a high level of treatment for toxics can cause very large expenditures for minimal removal. We have attempted to adjust to those kinds of problems. In many cases, BAT and BPT are the same for toxic removals. Where we get 90 percent out for *x* dollars, and for 10 times *x* dollars you get an extra 3 percent out, we really do try to avoid that in adopting BAT standards.

It could be there are some distortions that continue to occur in the development of these technology-based standards as they relate to toxics. And I think the Agency has an obligation to work very hard to avoid those kinds of circumstances. There is the argument for certain kinds of substances—they are sufficiently toxic—that while the actual dollars per pound removed can be relatively high, where we are concerned enough about those particular substances, it may well warrant that kind of expenditure in order to avoid the problem.

But you put your finger on the dilemma—where we really get into these very high expenditures for relatively small removal, and where we can't avoid them under the existing law. I don't know how widespread that problem is, but where that does happen, and the extra removal is hard to justify on the basis of water quality or health-related standards, then it creates difficulties.

Mr. Moody. Are you suggesting a waiver process there?

Mr. Ruckelshaus. The problem with the waiver process is it is very complicated administratively, very resource-intensive. It may be there is some way of addressing it in the law so as to avoid that case-by-case analogy. We do have a fundamentally different factors provision which we have requested in which we can get at some of the really gross distortions that exist within a particular industry classification. We have asked this committee to, and the Senate committee as well, to look and see if we can't get that level of flexibility in dealing with some of the distortions that might occur.

Mr. Moody. How do we get the balance and flexibility that we all would like in some sense to conserve scarce resources? You don't want to have inflexible standards, where in some cases you spend much more than you are getting back. At the same time, balance that flexibility with this notion of economic achievability. How do you define economic achievability in the BAT?

Mr. Ruckelshaus. Very hard to do. Occasionally we define it as an affordability test. I don't frankly like that test.

Mr. Moody. Would you call in the accountants and ask if the company can afford it?

Mr. Ruckelshaus. In the first place, let's assume we can establish who can afford it and who can't. To a certain extent, we are in the economic competitive race, rewarding the losers, the people who don't make it. The people who have taken what they have earned over the years, reinvested in plant and equipment and done everything we want them to do, are then penalized because they can afford to remove something.

So I don't think that is a test I feel particularly comfortable with. On the other hand, certainly a cost-effectiveness test often gets at the problem you mentioned. Namely, if we can get 95 percent out for *x* dollars, and then the curve breaks, and it costs you 10 times *x* to get another 2 or 3 percent out, that is a good way of looking at a way of balancing costs against the benefits received from the expenditures made. Benefits start to diminish, get very slight, in comparison with the cost then. That is one way of striking that balance.

Mr. MOODY. It seems to me that predictability and an agreed upon framework for analysis is awfully important. How are you going to set up that analysis so we know what economically achievable is going to mean?

Mr. RUCKELSHAUS. The Congress, of course, can define it any way it wants and then oversee the Agency's exercise of the power granted to it to insure we are doing what you intended.

A cost-effectiveness test is one we do use in the Agency in a variety of circumstances. We are specifically given the authority to use that test under some statutes. And we do break the requirement for additional technology where we find costs going straight up and the amount of incremental pollution removed being relatively slight.

So we have had experience with using that kind of approach. And the Congress has from time to time reviewed it, and renewed our authority to do that.

Mr. MOODY. Would you recommend that that scope be given to the agency to apply that kind of test for the BAT-BPT.

Mr. RUCKELSHAUS. To a certain extent in adopting BAT standards, we do that now. We also as I say, have attempted in the past where it gets very complicated to subcategorize a particular industrial facility within an industrial class, to use this fundamentally different factors approach, which takes costs into account in determining whether a given national standard should apply to a specific facility.

Mr. MOODY. Is there a method for letting the chemical, or the allegedly polluting industry, get in on the cost of testing and arriving at the necessary information base to do this? The testimony we have had indicates they feel so strongly about it, and feel it is such a waste of resources to not have some flexibility that they would be willing to pay for the tests and participate in developing the data base and analytic base to do this on a case-by-case basis.

Do you have any response to that?

Mr. RUCKELSHAUS. I mean I think we ought to be perfectly open to share information, share methodologies with any industrial group. I don't know that them paying for it is so much the problem. But anybody who is willing to share some of the burden that the Agency has to do work, why, we ought to be amenable to letting them do that. I understand their concern. I guess what we need to do is to get specific about a concern and see how we could address that.

The generality I agree with you on. That if there were a way of avoiding this, where we really get a distortion, if the current law is such that the Agency feels it has to act in such a way that, as to a specific facility, specific plant, we are causing very large costs to be expended for minimal benefits, we ought to try to avoid that. There ought to be sufficient flexibility in the Agency's powers to avoid that kind of distortion.

Mr. MOODY. Will you be suggesting some language we could look at in that regard?

Mr. RUCKELSHAUS. Let me discuss with the staff, and again with you and your staff, and with the committee, where those distortions may be occurring so we can make sure that we understand that we are talking about the same thing, and see if it is possible to address that.

[The following was received for the record from Mr. Ruckelshaus:]

*Questions.* How does the Agency consider economics in developing effluent guidelines? Can you provide the costs of these BAT and pretreatment guidelines to industry?

Answer. In developing Best Available Treatment Economically Achievable (BATEA) guidelines EPA determines, in accordance with Section 304(b)(2)(B) ". . . the cost of achieving such effluent reduction . . ." Regulations are not normally written on the basis of industrial categories, e.g. iron and steel, plastics molding, but subcategories of those industries. By subcategorizing, for example by size, the Agency can target which technology is "best" from an engineering standpoint and "cost achievable" from an economic standpoint to a much smaller set of facilities than would be covered under a more general requirement. This can, and does, lead to instances where facilities in a more adversely affected condition, e.g. small business, are subjected to less expensive requirements than facilities in other subcategories in the same industry. Our "cost achievability" tests are often undertaken using net present value (NPV) models incorporating such factors as impacts on employment, price effects, the cost of capital, inflation, and foreign competition. Similar studies are undertaken in developing pretreatment requirements.

Projected investment and annual costs of BAT and pretreatment standards for existing sources (PSES) are provided in the attached tables.

### CONSENT DECREE INDUSTRIES—BAT INCREMENTAL INVESTMENT AND ANNUAL COSTS

[1982 millions of dollars]

| Industry | Status | Investment | Annual |
|---|---|---|---|
| Adhesive and sealants | Preproposal | N/A | N/A |
| Aluminum forming | Final | 48.2 | 25.1 |
| Battery manufacturing | Proposed | 2.8 | 0.8 |
| Coil coating (except cans) | Final | 9.9 | 4.0 |
| Can making | Proposed | 0.8 | .5 |
| Coal mining | Final | 0 | 0 |
| Copper forming | do | 6.5 | 6.3 |
| Electronics—1 | do | 4.2 | 2.7 |
| Electronics—2 | Proposed | 0 | 0 |
| Foundries | do | 53.6 | 10.7 |
| Inorganic chemicals | Final—1974 | ([1]) | ([1]) |
| Inorganic chemicals—1 | Final—1982 | 9.5 | 8.7 |
| Inorganic chemicals—2 | Proposed | 4.2 | 2.1 |
| Iron and Steel | Final—1982 | 93.1 | 21.0 |
| Leather tanning | Final | 0 | 0 |
| Metal finishing | do | 0 | 0 |
| Nonferrous metals Smelting | Final—1974 | 0 | 0 |
| Nonferrous metals Smelting—1 | Proposed | 60.3 | 34.4 |
| Nonferrous metals Smelting—2 | Preproposal | N/A | N/A |
| Miscellaneous forming | do | N/A | N/A |
| Organic chemicals and plastics | Proposed | 519.8 | 243.1 |
| Pesticides | do | 30.1 | 23.5 |
| Petroleum refining | Final | 0 | 0 |
| Pharmaceuticals | do | 0 | 0 |
| Plastics molding and forming | Preproposal | N/A | N/A |
| Porcelain enameling | Final | .4 | .1 |
| Pulp and paper | Final—1982 | 0 | 0 |
| Pulp and paper (PCB's) | Proposed | 29.4 | 9.7 |
| Steam electric | Final | 21.6 | 8.6 |
| Textile mills | Final—1982 | 0 | 0 |
| Timber | Final | 0 | 0 |
| Total |  | 894.4 | 401.3 |

[1] Industry costs not expressed in the Federal Register.

N/A—Estimates not available because regulation is in preproposal stage.

CONSENT DECREE INDUSTRIES—PSES INCREMENTAL INVESTMENT AND ANNUAL COSTS

[1982 millions of dollars]

| Industry | Status | Investment | Annual |
|---|---|---|---|
| Adheseives and sealants | Preproposal | N/A | N/A |
| Aluminum forming | Final | $26.1 | $16.7 |
| Battery manufacturing | Proposed | 25.0 | 6.2 |
| Coil coating (except cans) | Final | 14.3 | 5.0 |
| Can making | Proposed | 27.6 | 16.7 |
| Coal mining | Final | 0 | 0 |
| Copper forming | do | 9.2 | 7.7 |
| Electronics—1 | do | 0.9 | 0.6 |
| Electronics—2 | Proposed | 9.9 | 2.7 |
| Foundries | do | 48.1 | 11.5 |
| Inorganic chemicals | Final—1977 | 1.2 | 1.4 |
| Inorganic chemicals—1 | Final—1982 | 9.8 | 7.5 |
| Inorganic chemicals—2 | Proposed | 1.2 | .5 |
| Iron and steel | Final—1982 | 30.3 | 5.6 |
| Leather tanning | Final | 159.0 | 45.0 |
| Metal finishing | do | 351.0 | 118.0 |
| Nonferrous metals smelting | Final—1974 | [1] | [1] |
| Nonferrous metals smelting—1 | Proposed | 13.1 | 8.9 |
| Nonferrous metals smelting—2 | Preproposal | N/A | N/A |
| Miscellaneous forming | do | N/A | N/A |
| Organic chemicals and plastics | Proposed | 880.2 | 403.5 |
| Pesticides | do | 15.8 | 10.8 |
| Petroleum refining | Final | 0 | 0 |
| Pharmaceuticals | do | .4 | .3 |
| Plastics molding and forming | Preproposal | N/A | N/A |
| Porcelain enameling | Final | 18.7 | 9.9 |
| Pulp and paper | Final—1982 | 0 | 0 |
| Steam electric | Final | 0 | 0 |
| Textile mills | Excluded ¶8 | 0 | 0 |
| Timber | Final | 0 | 0 |
| Total |  | 1,641.8 | 678.7 |

[1] Industry costs not expressed in Federal Register

NA—Estimates not available because regulation is in preproposal stage

Mr. MOODY. I have one last question on nonpoint source pollution. Your testimony, if I can interpret it correctly, says the States should have the predominant role in the nonpoint. Is that a retreat, in essence? I was hoping that you would come out pretty strongly for an aggressive nonpoint source program. The problem it seems to me with letting the States do it is if different States dump into a common receiving body of water, there is going to be a very strong and systematic incentive for a State to do less than its full share.

Mr. RUCKELSHAUS. Well, I don't believe our program on nonpoint sources has been very aggressive in the past. And I think it is time for us to get aggressive. I think what I outlined was an aggressive nonpoint source program. If the only way we can be aggressive is to have some kind of Federal cost-sharing program, then what I am concerned about is that it look aggressive, but it wouldn't be, because we wouldn't have enough money in the program to meet the total national need, and what we will force is everybody lining up and not doing anything until the Federal money is available.

We have projected a very large expenditure for doing this nationwide, just as in the sewage treatment plant grant program. And then you start adding in a whole lot of other eligible kinds of funding mechanisms. The next thing you know we have a multibillion dollar need out there with everybody waiting until the Federal money is available. We have some examples now in States like Wisconsin, your own State, which have been very aggressive in having their own cost-sharing program. They have made remarkable progress at getting individual farmers to adopt best management practices and addressing them at given watersheds. They have moved that program ahead.

One of the concerns that I have, frankly, about the bill that has been introduced in this committee is that it says in order for any cost-sharing program of the Federal Government to take place, you, the State of Wisconsin, have got to agree to keep it at the same level. Your levels have been much higher than other States around the country. Since you have addressed it and done good work, you have got to stay there in order to be eligible for any Federal funds. Other States wouldn't. That doesn't make any sense to me. If anything, you ought to be rewarded for the work that you have done.

If Wisconsin's experience can be transferred to other States, and they can pick up their share and start moving ahead on a best management practices nonpoint source program, I think we could really get moving. I think we now have the power through the water quality standards to move against nonpoint source problems. Water quality management approach that we adopt with the States. If we put in their specific responsibilities for moving against nonpoint source, and help them adopt either a cost-sharing or some kind of regulatory program, we may really be able to make some progress.

Mr. MOODY. We have to go vote.

Mr. ROE. Two questions. The gentleman from Kentucky, Mr. Snyder.

Mr. SNYDER. Thank you, Mr. Chairman.

I apologize for not being here during your dissertation, which I am sure was delivered with eloquence, but I was interested in a matter on the House floor. I appreciate you being here. I have total confidence not only in your eloquence but in your ability to handle the situation.

Mr. SNYDER. Thank you.

Mr. ROE. The gentleman from Arizona.

Mr. MCNULTY. Mr. Chairman, may I ask two quick questions?

Mr. Ruckelshaus, the Navaho Nation claims that three parts of the Nation fall into three regional EPA offices. Can that be addressed in some fashion so there is only one?

Mr. RUCKELSHAUS. Well, it, I don't see why it can't. I have not addressed this problem. Maybe we could make the assignment of one of those regions to have the responsibility for dealing with the Navaho Nation. I would be glad to request that.

Mr. MCNULTY. Thank you. Second question. The city of Tucson woke up just very recently to find an enormous plume of trichloroethylene in the municipal water system which has required the city to drill 15 wells. Your agency has already drilled 11 wells. Some 20 more are likely to be drilled, many of them perhaps by your agency, which has moved very swiftly on an enormous problem. Residue of cleaning solvent from the Defense Department activities during and right after World War II. There are a couple million dollars invested in this thing already. All that is to do is to determine the size of the problem, not changing it.

Estimates now run as high as $20 million. Given that and what you told us last week about the Superfund from which much of this money has come, the waste sites, the 1985 deadline, is there enough money in the Superfund to meet these problems nationally?

Mr. **Ruckelshaus**. The example you cite would not, if it were a Defense Department oriented contamination, would not come from the Superfund. That would come from a separate appropriation from the Defense Department itself.

Mr. **McNulty**. The Defense Department has shown a notable reluctance to concede the truth of that, although thus far there is no other rational reason for finding that.

Mr. **Ruckelshaus**. I don't know of that specific instance. But if it were traced back to the Defense Department, it would have to come from their appropriation. If it has presently come out of the Superfund, they would have to reimburse it under existing law. My response to your general question is, we are going to need to address next year the question of reauthorization of the Superfund. There is not enough money in the Superfund to deal with all of the problems associated with these abandoned hazardous waste sites and the Congress and administration is going to have to face them.

Mr. **McNulty**. Perfect finish, Mr. Ruckelshaus. Thank you.

Mr. **Roe**. Mr. Administrator, we want to thank you and your colleagues for a very splendid presentation.

Mr. **Ruckelshaus**. Thank you, Mr. Chairman.

Calendar No. 394

| 98TH CONGRESS<br>*1st Session* | SENATE | REPORT<br>No. 98-233 |
|---|---|---|

# CLEAN WATER ACT AMENDMENTS OF 1983

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## REPORT

OF THE

## COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

TO ACCOMPANY

S. 431

together with

ADDITIONAL AND SUPPLEMENTAL VIEWS

SEPTEMBER 21 (legislative day, SEPTEMBER 19), 1983.—Ordered to be printed

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## Calendar No. 394

98TH CONGRESS
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SENATE

REPORT
No. 98–233

# CLEAN WATER ACT AMENDMENTS OF 1983

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SEPTEMBER 21 (legislative day, SEPTEMBER 19), 1983.—Ordered to be printed

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Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

## REPORT

together with

## ADDITIONAL AND SUPPLEMENTAL VIEWS

[To accompany S. 431]

The Committee on Environment and Public Works, to which was referred the bill (S. 431) to amend the Clean Water Act, as amended, to authorize funds for fiscal years 1984, 1985, 1986, and 1987, and for other purposes, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill (as amended) do pass.

### GENERAL STATEMENT

In the 97th Congress, the Subcommittee on Environmental Pollution conducted five days of hearings on amendments to the Clean Water Act. At those hearings, 38 witnesses testified on the need to amend the Act. The Administrator of the Environmental Protection Agency submitted amendments to the Clean Water Act which were introduced by request. Congress failed to act on the amendments last year.

During this session of Congress, the Subcommittee on Environmental Pollution once again held hearings on the need to amend the Clean Water Act. Two bills, S. 431 and S. 432, provided the focus for the hearings. The Administration did not formally submit proposed amendments. Four days of hearings were held and 37 witnesses testified on a variety of subjects.

As a result of these hearings, it was generally concluded that the Clean Water Act did not require major changes. Its structure was deemed sound and its objective—the maintenance and protection of the physical, chemical, and biological integrity of the Nation's waters—remains intact.

The Federal Water Pollution Control Act Amendments of 1972 and the Clean Water Act Amendments of 1977 established a comprehensive approach to cleaning up the Nation's waters by establishing a regulatory framework for the phased implementation of water quality control technologies, for industrial and municipal dischargers of toxic and conventional pollutants, necessary to protect and maintain the integrity of the Nation's waters. The Act provides for administrative, standard-setting, enforcement, and funding mechanisms to achieve the designated clean water goals. The portion of the Act providing Federal assistance to aid communities in constructing municipal treatment plants was dealt with by Congress in 1981. S. 431 addresses other key aspects of the legislation.

In 1972, clean water legislation was born from the public's demand that pollution be eliminated from the Nation's waterways in order to protect public health and the environment. A Louis Harris poll conducted in December 1982 for the Natural Resources Council of America showed that 74 percent of the American people support the goal of achieving fishable swimmable waters. The amendments made by S. 431 will assist in the progress toward that goal.

The interim water quality goal of achieving fishable, swimmable waters everywhere by July 1, 1983 was established in the 1972 Act. Although progress toward attainment of that goal is underway, it has not been achieved on a nationwide basis. In some areas of the country, this goal has been achieved by the implementation of stringent water pollution control measures. Information on the costs and benefits that have resulted has caused the Committee to reassess whether its achievement nationally is still in the public interest. However, the Committee felt that further progress could be made in this direction in accordance with the strong public support for the Act. Therefore, the notion of allowing a determination of progress made to date and a postponement of further pollution control steps before going forward with implementation of other portions of the Act was rejected.

In the view of the Committee, movement toward the attainment of the goals and objectives of the Act requires the uniform installation of the best available technology economically achievable by all dischargers. In the process of reporting out S. 431, the Committee carefully evaluated the common complaint of dischargers that uniform compliance results in treatment for treatment's sake. In order to avoid this, some proposed allowing a permit modification which would waive BAT requirements for a point source during the life of a permit. Such a modification would be based on an analysis of water quality. This notion was rejected by the Committee in the interest of assuring that an adequate level of pollution removal is achieved in an equitable manner.

The technology-based approach to water pollution control was adopted in 1972 primarily because of the historical ineffectiveness of the previous water quality-based approach. Failure of this type of approach was due to uncertainties about the relationship between pollutant loadings and water quality and the association between water quality and health and environmental effects. In the absence of this knowledge, implementation of uniform control technologies provides an immediate and effective method of clean-up. Amendments in S. 431 do not alter this approach. They support the public promise made to achieve scheduled progress toward the elimination of pollution from the Nation's waters.

The Act currently requires the installation of the best conventional technology (BCT) and best available technology (BAT) by July 1, 1984. The 1977 standard was designed to address conventional pollutants for the most part. The 1984 deadline for the installation of BAT was designed to control non-conventional pollutants and toxic pollutants. Congress has had to adjust compliance deadlines in the past in order to give the Environmental Protection Agency an opportunity to develop complicated industrial toxic pollutant standards to be written into NPDES permits. However, since the EPA has not issued final guidelines for many industrial categories, many industrial waste discharge permits have not been written on the basis of guidelines, either for BPT or BAT, but rather on the basis of best engineering judgment. Final limitations incorporated into these permits were based on negotiations between the issuing agency and the discharger rather than on uniform standards promulgated by the EPA. This is not to say that these permits have not played a considerable role in reducing pollutants being discharged into the Nation's waters. Both industry and the local, State, and Federal permitting authorities are to be commended for progress made to date.

Effluent guidelines for most categories are being finalized and incorporated into discharge permits. Increased removal of toxic pollutants is expected as a result. The intent of the Act is to agressively control those discharges preventing achievement of the goals. This productive trend should not impeded. The amendments in S. 431 support this momentum. While necessary compliance deadline adjustments have been made, no major changes are warranted. To allow modifications now would only jeopardize the gains made to date.

The quality of the Nation's waters is improving. The progress made in the last decade has been visible as the most evident types of pollution have been controlled.

Much of the acclaim for the Clean Water Act is due to the fact that biological communities are being re-established in areas where they have been absent for decades because of pollution. This regeneration is occurring primarily because of the reduction in conventional pollutant loadings from municipal and non-municipal sources. However, it is disturbing that it is now necessary to warn people against unlimited consumption of fish caught in these previously unpopulated water bodies. With several hundred million pounds of toxic pollutants being discharged annually into the Nation's waters, it is not surprising that these fish and shellfish, which can now be sustained because of increased levels of oxygen, are being systematically contaminated by toxic pollutants to the point of being a potential health threat to those who eat them.

Clean water gains from now on will be more difficult and more costly to achieve because of the focus on the control of persistent, toxic pollutants through the implementation of advanced control technology and the issuance of more comprehensive permits. In instances where water quality has been extraordinarily degraded, S. 431 requires the Environmental Protection Agency to move beyond BAT controls in order to attain water quality standards. Continued attention to these problem areas is required to keep faith with the commitment Congress made to the public. It is vital that toxic pollutants be controlled to protect public health and our national water resources. S. 431 provides the necessary adjustments in the Clean Water Act to reinforce pollution reduction requirements and bring achievement of the Act's goals closer to realization.

In addition to specific amendments that were made to the Clean Water Act other issues were raised and discussed by the Committee. Among other issues is the interpretation that some EPA regional offices are giving to section 101(g).

The Clean Water Act establishes a number of goals which may need to be adapted in different geographic areas that exhibit extreme climatological conditions. These goals depend on balancing the facts surrounding each case so that solutions to prevent, reduce, and eliminate pollution are consistent with State and Federal programs for preserving and managing water resources. It is thus the Committee's intent that section 101(g) should be interpreted so that restrictions resulting from State water laws cannot be used to disapprove State jurisdiction over the NPDES program or other programs. Resolution of potential conflicts can better be addressed in the context of specific permit proceedings, which take into account individual circumstances that may vary widely.

## Major Issues

### PRETREATMENT

Pretreatment of industrial wastes discharged into publicly owned treatment works was mandated by the Clean Water Act of 1972 to prevent those wastes from interfering with or passing through municipal waste treatment facilities or contaminating sludge. The national pretreatment program is based on application of technology-based uniform treatment standards developed by the Environmental Protection Agency. These standards are applicable to individual industrial categories which discharge priority pollutants into publicly owned treatment works. The program is implemented at state and local levels according to the Agency rules governing the issuance and enforcement of pretreatment limits.

Although this pretreatment requirement was enacted in 1972, the Agency has had difficulty putting the program in place. This fact was recognized by Congress in 1977 with an extension of the compliance period for implementation and the inclusion of a removal credits provision in section 307. Removal credits were authorized with the intent of avoiding redundant treatment by industries discharging into well operated municipal facilities. Under this provision, municipal facilities may modify pretreatment standards for industrial users on a case-by-case basis. The modification is based upon the proven removal capability of the municipal facility for a particular pollutant.

Significant delays have occurred in the implementation of the pretreatment program because of problems associated with the issuance of administrative rules and the development of categorical pretreatment standards. EPA issued rules on February 2, 1977, to comply with the requirements of section 307(b) that it establish administrative mechanisms at all levels of government to implement the pretreatment program. The rules were immediately challenged by numerous interested parties.

As a result of these challenges and other administrative decisions, the general pretreatment rules were not final until January 20, 1981. After additional litigation, the regulations became effective, in part, on January 31, 1982. The EPA has been attempting to develop uniform pretreatment standards for industrial categories since 1973. Their efforts have been unsuccessful until recently. This delay has been regrettable because of the uncertainty it has caused among the affected industries and municipalities. That uncertainty has served as an impetus to efforts by those industries and some municipalities to seek modification of the Federal program requirements.

During hearings before the Environmental Pollution Subcommittee last year, a number of witnesses testified about the need to allow communities, which had developed their own pretreatment programs in advance of Federal categorical standards, the opportunity to demonstrate equivalence with the forthcoming Federal standards. Although no bill was reported by the Committee in 1982, this idea appealed to many Members.

On February 3, 1983, Senators Chafee and Randolph introduced amendments to the Clean Water Act. These amendments included a provision which would have allowed a municipal facility to have the pretreatment requirements modified with respect to it and its indirect dischargers if it could meet certain performance conditions. The conditions required before a modification could be granted included at a minimum, secondary treatment capability and the establishment of a pretreatment program based on numerical standards for toxic pollutants.

During the hearings before the Environmental Pollution Subcommittee, witnesses representing industry, environmental, and state and local concerns addressed themselves to the pretreatment provisions of S. 431. The Subcommittee focused considerable attention on it because of the central role that pretreatment plays in the toxic pollutant control strategy of the Act.

The alternative pretreatment provision in S. 431 ultimately proved unsatisfactory. Even though many Members of the Committee favored some type of modification, none could be agreed upon. An alternative program could not be found that could reasonably be expected to protect against pass through and sludge contamination without being so restrictive that no facility could qualify.

Committee members also acknowledged that experience with existing waiver provisions under the Clean Water Act has been that, while waivers from uniform requirements may appear to be desirable, in the long run they increase program uncertainty. Under one such provision in section 301, a waiver for secondary treatment is provided a POTW upon a showing that, among other things, no environmental degradation will occur. That provision has generated many applications for discharges into offshore waters that were never considered appropriate or eligible when section 301(h) was enacted in 1977. As a result, many communities that should be well into the construction of secondary treatment facilities have instead spent financial resources pursuing waivers. This type of uncertainty and delay cannot be allowed in the pretreatment program which serves as the keystone of toxic pollution control for the Nation's waters.

EPA Administrator William Ruckelshaus testified before the Committee that although the pretreatment modification concept in S. 431 was appealing, the potential demands on his Agency's resources for implementation would be great. He also expressed his concern about the Agency's ability to assure an adequate and consistent level of toxics removal under such a program. For these reasons, he could not support the provision.

In light of these issues, the pretreatment provision as it appeared in S. 431, as introduced, was deleted. The Committee chose not to alter any existing provisions of the program including the deadline for compliance with categorical pretreatment standards which continues to be not later than three years from the date of promulgation.

## WATER QUALITY STANDARDS AND TOXICS CONTROL

Since October 1982, when the Environmental Protection Agency proposed regulations to revise existing procedures for establishing water quality standards, the Committee has carefully reviewed the status of standard-setting and its relationship to other portions of the Act. The October 1982 proposals were counter to the objectives of the Act and significantly weakened the existing regulations. Key among the regressive proposals were allowances for the downgrading of water use designations based on analyses of use attainability and benefit-cost assessments and the granting of variances to individual dischargers from compliance with water quality criteria on the basis of economic hardship.

Many Members were sufficiently concerned about these aspects of EPA's proposed regulations that they wrote to then Acting Administrator John Hernandez and asked that the proposal be withdrawn. In further response to this attempt to revise existing regulations, S. 431 was introduced, with a provision that froze all stream classifications in place as of January 1, 1982. Other than specifically writing the existing regulations into law, this appeared to be the simplest way to address the Committee concern that the interim water quality goal of the Act be maintained.

The role of water quality standards in the regulatory structure of the Act is crucial to achievement of the interim water quality goal. Many of the provisions dealing with upgrading requirements and protecting high quality water in the existing regulations even predate the 1972 Act. An important example is the anti-degradation policy which supports protection of water quality meeting or exceeding the level necessary to support a designated use. This policy is required by the current law and has been embodied in regulations since the late 1960's. The Committee was sufficiently concerned about the adverse impact that the proposed revisions to the regulations would have in this decade and a half old policy, that an explicit anti-degradation policy codifying the existing regulations was included in S. 431 as reported. Section 6 of S. 431 as reported also places restrictions on downgrading of State water quality standards based on existing water quality standard regulations and the stated goals of the Act.

In planning for the next decade, an obvious issue that has to be addressed relates to the problem of persistent toxic pollution. It is clear that some water bodies are so degraded that compliance with the best available technology (BAT) and secondary treatment requirements will not necessarily assure the attainment of the water quality goals of the Act. In those instances, it may be necessary to institute additional pollution controls. S. 431 provides a mechanism for doing this. Modifications have been made to sections 302, 303, 304, and 305 of the Act, which will support the development of water quality based effluent limitations after the implementation of best available technology requirements and State water quality standards consistent with the objectives and goals of the Act.

The reported bill requires States to undertake a progressive program directed at reducing toxic pollutant loads where best available technology is not sufficient to meet State water quality standards. The three key requirements of the program are:

(1) Identification of water bodies, within two years of enactment, which will not meet these water quality standards after the implementation of BAT because of toxic pollutants;

(2) Adoption of numerical criteria for the "problem" pollutants in such water bodies, based on EPA water quality criteria, and utilization of criteria based on biomonitoring techniques to supplement numerical criteria, or for less toxic pollutants, until numerical criteria can be developed; and

(3) Establishment of effluent limitations, based on these criteria, and incorporation of these into permits which must be complied with no later than three years after their establishment.

These requirements will provide the Environmental Protection Agency and the States the authority to implement necessary additional control measures through the use of NPDES permits and thereby support the achievement of the Act's goals.

### OCEAN DISCHARGE WAIVERS

In 1977, Congress amended the Clean Water Act to allow municipalities discharging into marine waters to apply to the Administrator of the Environmental Protection Agency for waivers from the uniform secondary effluent limitation requirement. In the period following the enactment of the amendments and prior to the introduction of S. 431, the EPA tentatively approved 16 waiver applications and tentatively denied 8. However, concern has been expressed that since the 1981 municipal construction grants amendments were enacted many more applications have been submitted that do not meet with the congressional intent of section 301(h) but the EPA may have to grant many of these waiver applications unless Congress provides the Agency with further guidance.

When this provision was enacted, it was intended that only municipalities with primary treatment capability discharging into deep and unstressed waters be considered for these waivers. It was expected that a number of West Coast and very few East Coast communities could meet the conditions laid out in section 301(h) to obtain a waiver. However, Court decisions have blurred the intent of Congress so that both East and West coast communities discharging sometimes untreated sewage effluent can expect to receive waivers. This should not be the case.

In order to provide the Agency a clear mandate to deal with marine discharges, the reported bill places additional restrictions on those communities which seek waivers. The first step the Committee took was to amend section 301(h)(5) to require that sources introducing wastes into POTW's are in compliance with all applicable pretreatment requirements and the applicant has assured continued compliance with such requirements. Current regulations require communities to develop pretreatment programs. This amendment makes it clear that Congress intends that no final waivers should be granted unless the applicant has satisfied this requirement. It is intended that, by the time of approval, the applicant must have had an approved pretreatment program with which indirect dischargers are in compliance. This requirement will result in denial of waivers where non-compliance among indirect dischargers is widespread. However, it is not the intent that EPA deny waivers to POTWs which are diligently implementing a pretreatment program merely because an insubstantial percentage of indirect dischargers with a trivial amount of flow are not in compliance with pretreatment requirements. The Administrator should exercise his discretion in determining the significance of non-compliance and examine the measures the POTW is taking to assure compliance and implement an effective pretreatment program. Emphasis should be placed on overall compliance, rather than focussing on individual indirect dischargers which may not be in compliance.

In addition, the amendment requires communities of 5,000 or more to have adopted and have in effect a program that controls the issuance of toxic pollutants into a publicly owned treatment works. It is clear that many categorical pretreatment requirements will not be applicable at the time these waivers are considered and granted. In place of the national categorical standards communities are expected to have enforceable local limits for their industries. This amendment is necessary because of the large number of POTWs seeking waivers which do not have approved programs. Based on information provided the Subcommittee by EPA, of the 207 applications on file approximately 50 do not have approved pretreatment programs.

The review of these applications takes a significant amount of time. Applicants amass volumes of information which must receive the Agency's attention. However, with Agency resources constantly being placed under additional burdens, it is appropriate that these new requirements in section 301(h) should help the Agency limit its review time. Communities seeking waivers should understand that no new waivers will be granted unless they are in compliance with this provision.

New parapgrah (8) of section 301(h) requires that at the time a permit modification becomes effective the applicant is discharging effluent which has received primary or equivalent treatment. Section 301(h) was never intended to authorize the discharge of untreated sewage. This amendment makes clear that operating primary treatment is a minimum to qualify for a waiver. Flexibiity is provided for the Agency to deal with unique problems in Alaskan Villages and the Trust Territories where screening and skimming of waste may constitute primary treatment and be sufficient, providing that all other section 301(h) criteria are otherwise satisfied.

Concern was also expressed for marine bays and estuaries which receive wastes from POTW's seeking waivers. These waters represent some of our most productive biological areas and deserve to be protected against degradation. Two amendments to section 301(h) have been made for that reason. The first amendment clarifies that marine waters receiving discharges exhibit characteristics which assure that the diluting water does not contain significant amounts of effluents previously discharged from the POTW. While this amendment deals with "marine waters" it is expected that it will have its greatest impact on marine bays and estuaries. It is intended to be used as another test by the Agency in evaluating discharges into these waters to make certain that sufficient flushing exists so as not to allow entrapment of previously discharged waste. While this provision does not affect any tentative approvals granted to date, it is expected to give the Agency an important guideline for future review of applicants' discharges into marine waters.

The last amendment to section 301(h) deals with discharges into stressed waters. The amendment provides that for saline estuarine waters, a section 301(h) modification may not be issued if, at the time of application, the waters do not support a balanced indigenous population or allow recreational activities, or exhibit water quality below the water quality standards adopted to protect public water supplies, wildlife, or recreational activities. The prohibition applies regardless of any causal relationship between such characteristics and the applicant's discharge.

For the purpose of section 301(h)(8)(B) the term "balanced indigenous population" is defined as the community that can reasonably be expected to occur in a given area absent pollution. Its existence is generally determined by comparing the ecological community in question to that of nearby healthy communities existing under comparable but unpolluted physical and environmental conditions.

Again, attention is given to saline estuaries receiving discharges which are not achieving the interim water quality goal of the Act. It is intended that applicable water quality standards refers to standards for BOD, SS, DO, and toxic pollutants. The phrase "such other standards" necessary to assure support and protection of such uses refers to marine water quality criteria necessary to support these uses.

Waivers from secondary treatment for discharges into marine estuaries should be given special reviews from the Agency, when the estuaries are stressed from a combination of sources. Partial treatment of sewage into already polluted estuaries should not be allowed. Previously EPA looked at only the source seeking the waiver in making its determination. Under this amendment the Agency cannot grant a waiver for a discharge into an estuary whether or not the responsibility for the failure to meet the interim goal of the Act lies with the discharger. Waiving treatment requirements for a point source discharging into an unhealthy body will not result in reasonable further progress toward achieving the goals of the Act.

### SEWAGE SLUDGE MANAGEMENT

Regulations providing guidelines for sludge use and disposal were required to be published within one year of enactment of the Clean Water Act Amendments of 1977. Although the Environmental Protection Agency has studied the sludge problem for several years, it has not yet succeeded in publishing the required regulations.

This section establishes phased deadlines for the promulgation of guidelines for use and disposal of sewage sludge. Further it provides direction to the Environmental Protection Agency concerning the development of these guidelines, and clarifies the relationship of Section 405 to other laws which govern the use and disposal of sludge.

This section establishes new, realistic deadlines for promulgation of the sludge regulations. EPA officials testified that development of these regulations is now a high priority and that these deadlines can be met. The Committee expects EPA to meet this commitment.

This section requires that sludge regulations be developed in two phases. The two phases differ solely on the basis of the amount of information that is currently available to support the regulations. The Environmental Protection Agency's studies have yielded sufficient information to date to support the immediate promulgation of regulations for a number of toxic pollutants found in sludge. Where available information indicates that toxic pollutants may adversely affect public health or the environment, the regulations must be published within 18 months after enactment of the Clean Water Act Amendments of 1983. In the case of toxic pollutants for which available information is not sufficient at the present time to determine the need for regulation, EPA must collect the needed information and publish regulations within 30 months of enactment.

The section requires EPA to develop some regulations in advance of others in recognition of the urgent need to protect public health and the environment as expeditiously as possible from exposure to those toxic pollutants about which EPA has gathered sufficient information to support rulemaking. A second regulatory phase was established to ensure that EPA's regulations comprehensively address all toxics of concern in a timely fashion.

In both phases of regulation, EPA is required to identify toxic pollutants for regulation which, on the basis of their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment. The section requires EPA to establish numerical limits for each such toxic pollutant unless a numerical limit is not feasible, in which case the Agency may prescribe a design, equipment, management practice or operational standard. This provision is intended to give EPA a measure of flexibility, but the Agency is expected to justify any deviation from the presumptive requirement for numerical limits.

The regulations issued under this section must be adequate to protect public health and the environment from any reasonably anticipated adverse effects of toxic pollutants. EPA must consider both known and anticipated adverse effects of toxic pollutants; it should err on the side of caution in ensuring that the public is adequately protected from the effects of toxic pollutants.

The section requires compliance not later than six months from publication of the regulations. EPA may not extend the time for compliance by establishing an "effective date" which differs from the date of publication. Where more expeditious compliance is practicable, EPA shall require it.

Finally, this section was intended to expand the protection from toxic pollutants otherwise afforded to the public. Thus, where regulations or deadlines under this section are more stringent than those required by other laws, they shall override the requirements of other laws. Where section 405 regulations or deadlines are less stringent than those required by other laws, the requirements of other laws shall govern.

## SECTION-BY-SECTION ANALYSIS

### AUTHORIZATIONS

This section 2 of S. 431, as reported, continues authorizations for a number of programs, most of which have existed since the Federal Water Pollution Control Act (now referred to as the Clean Water Act) was enacted in 1972. These include research, manpower training, forecasting, grants to State and interstate water pollution control agencies, training grants and scholarships to institutions of higher education, grants for the Clean Lakes program, and authorizations for all other sections of the Act for which funds are not specifically authorized elsewhere. Authorizations contained in this section continue these programs at fiscal year 1982 levels for fiscal years 1984 through 1987.

Section 2(a) amends section 104(u)(1) of the Clean Water Act to authorize $22,770,000 annually for such activities as research technical services, investigations, monitoring, and coordination. Particular attention should be given to priority water bodies such as Long Island Sound to insure adequate monitoring occurs.

Section 2(b) amends section 104(u)(2) of the Act to provide $3 million annually for the manpower development training program provided for by section 104(g)(1). This program provides assistance to States and other entities to develop trained personnel to operate and maintain sewage treatment works.

Section 2(c) amends section 104(u)(3) of the Act to authorize $1.5 million annually for the employment needs and forecasting program provided for by section 104(g)(2).

Section 2(d) amends section 106(a)(2) to provide $75 million annually for grants to States and interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly through appropriate State enforcement officers or agencies.

Section 2(e) amends section 112(c), authorizing $7 million per year for the program of training grants and scholarships to institutions of higher education to assist them in carrying out programs for the preparation of undergraduate students to enter water quality control-related occupations. This program is provided for by sections 109, 110, 111, and 112 of the Clean Water Act.

Section 2(f) amends section 314(c)(2) of the Act to authorize $30 million annually for grants to States for assistance in determining the eutrophic conditions of publicly-owned freshwater lakes, ways of controlling pollution in those lakes, and methods of working with Federal agencies to restore lake water quality.

Section 2(g) authorizes $160 million per year for section 517 for carrying out provisions of the Clean Water Act for which funds have not otherwise been authorized.

### CHESAPEAKE AND NARRAGANSETT BAY PROGRAMS

The Administrator is required to establish an Office of Chesapeake Bay Programs in support of a continuing State/Federal Chesapeake Bay program, at an authorization level of $3 million for the purposes of a) collecting, coordinating, and disseminating all research information concerning the environmental quality of the Bay, b) conducting research to identify the sources, quantity, and effects of sediment desposition on the Bay, c) conducting research on the impacts of pollutant loadings on the Bay's water quality and biota.

The administrator is authorized to make grants to those States affected by the Chesapeake Bay interstate management plan, at the request of the Governors, which commit to implement all or substantially all aspects of the plan within one year from enactment. States are required to submit a description of selected abatement actions and estimated costs for the Administrator's approval. The Federal share, with an authorization level of $10 million per year, will not exceed 55 percent of annual implementation costs. Administrative costs are limited to 10 percent of the annual Federal grant made to the State. States receiving grants must submit a progress report 18 months after receipt and biennally thereafter.

The Administrator is authorized to make grants, at the request of Governors of affected states, for the purpose of studying the environmental deterioration in Narragansett Bay and development and implementation of a water quality management plan.

In order to quality for such a grant, a State is required to demonstrate to the Administrator that it will:

a) establish a committee to provide guidance on the development and implementation of mangement program;

b) coordinate research and pollution abatement programs which address adverse water quality factors;

c) establish methods for improving sampling data collection and a system for collecting, analyzing, storing and disseminating such data; and

d) implement water quality managmenet practices within three years of enactment of clean water act amendments.

The Administrator will approve the management program within three months of submission if these conditions are satisfactorily met. Federal grants may be used to finance program implementation costs. The Federal share shall not exceed 55 percent of those costs in any fiscal year with the remainder provided by non-Federal sources. State contribution in kind will satisfy the requirement of the state portion.

Approval of program plans by the Administrator will allow the State to utilize Federal funds, authorized at $1.5 million annually, not to exceed 55 percent of the costs of implementing the program in any fiscal year. Non-Federal sources provide the remainder of the cost.

Management of the Chesapeake Bay Program has been assisted by a State/Federal committee, including water quality officials from the major states in the Chesapeake Bay Basin. Implementation of the results of this Chesapeake Bay Study will require a partnership between the Federal government and the individual States. Because of the involvement of water quality managers in guiding the policy and program decisions of the Chesapeake Bay Program, the recommendations are likely to be more realistic and the managers are likely to be more committed to implementation of the results.

The findings of the Chesapeake Bay Program underscore the fact that the Chesapeake Bay is an ecosystem which ignores State boundaries. In addition to individual State commitments to implementation of the Chesapeake Bay Program recommendations. The States and the Federal government must make the commitment collectively to continue interstate communication, cooperation, and coordination on the Chesapeake Bay.

In an unusual, and perhaps unprecedented way, the U.S. Environmental Protection Agency relied on the State/Federal Management Committee to set program directions and make policy decisions. The Chesapeake Bay Program Management Committee is an excellent model for Federal/State cooperation in environmental research/management studies.

The Chesapeake Bay Program was initially structured as a research program with little or no emphasis on management implications. Preliminary results of the research showed that the orientation of the research scientists had been to describe the current conditions of the Bay in objective, quantitative terms rather than to point out problems, explore causes, and suggest solutions. The Chesapeake Bay Program Management Committee members, particularly the State water quality managers, insisted that the scientific researchers had a responsibility to tell them what needed to be done to reverse the declining resource trends which they had identified in the Bay.

Several products of the Chesapeake Bay Program resulted from this pressure by the Management Committee which were not initially conceived when the Chesapeake Bay Program began.

1. The synthesis of the findings of 45 individual scientific research reports into a single report which "pushes" the science to suggest management implications.

2. A comprehensive report characterizing the overall environmental health of the Bay through a statistical analysis of trends

and the current condition of many water quality and fisheries productivity parameters.

3. A final Management Report recommending actions to maintain and improve the health of the Bay.

The success of the Chesapeake Bay Program so far, in maintaining the support of Congress and the States, can be, in large part, attributed to the Management Committee. The future likelihood that the Chesapeake Bay Program recommendations will be implemented is probably due almost exclusively to the Management Committee. By their intensive participation during the Chesapeake Bay study, the State and Federal managers have shaped a product that reflects their needs, and is something they can readily take action on.

### COMPLIANCE DATES

This section extends deadlines for compliance with several technology-based requirements of existing law. Section 301(b)(2)(C) is amended to require compliance with best available technology (BAT) effluent limitations for toxic pollutants as expeditiously as practicable but not later than three years after promulgation of the effluent limitations, or three years after July 1, 1983, whichever is later (but in no case later than July 1, 1987).

Under section 301(b)(2)(E) as amended, best conventional pollutant control technology (BCT) effluent limitations for conventional pollutants must also be complied with by those deadlines. Compliance with BAT effluent limitations or nonconventional, nontoxic pollutants under section 301(b)(2)(F) as amended is required not later than three years after such limitations are promulgated or three years after July 1, 1983, whichever is later (but in no case later than July 1, 1987).

A new paragraph (3) is added to section 301(b), providing that best practicable control technology (BPT) effluent limitations promulgated after January 1, 1982, which require a level of control substantially greater or based on fundamentally different control technology than limitations in the permits for such industrial category issued before that date, shall be complied with as expeditiously as practicable but not later than three years after promulgation of the effluent limitations or three years after July 1, 1983, whichever is later (but in no case later than July 1, 1987).

New section 302(b)(3)(B) provides that effluent limitations established in permits issued after enactment of these amendments on the basis of best engineering judgment or best professional judgment, in lieu of effluent guidelines for BPT, BAT, or BCT for toxic conventional or nonconventional pollutants, shall be complied with as expeditiously as practicable but no later than three years after such limitations are established in the permit (and in no case later than July 1, 1987).

These extensions only affect deadlines for technology-based effluent limitations for direct dischargers. They do not affect pretreatment compliance dates.

The Clean Water Act currently mandates that industry achieve effluent limitations based on BAT for all toxic pollutants, and BCT for conventional pollutants, no later than July 1, 1984. BAT for nonconventional pollutants must be achieved by three years after promulgation but no later than July 1, 1987.

These target dates were enacted in the expectation that the Environmental Protection Agency would promulgate guidelines in a timely fashion for the 26 major industrial categories to be regulated. The Agency has not met this expectation. Only eleven categorical standards have been promulgated. Under court order, the Agency is now required to promulgate all remaining standards by the end of 1984.

It will be impossible for many of these 26 industries to meet the 1984 compliance deadline. As documented in hearings before the Subcommittee on Environmental Pollution earlier this year, most industries require three years after promulgation of effluent limitation guidelines to design and construct necessary facilities. This section incorporates this three-year period into law.

In extending these compliance deadlines, the Committee emphasizes that dischargers are to comply with technology standards as expeditiously as practicable, regardless of the outside limits proscribed by this legislation.

Section 301(b)(3)(A) is intended to allow a discharger a reasonable amount of time to alter existing BPT treatment equipment or install new or additional treatment where necessary to meet more stringent BPT discharge requirements. Dischargers who had never previously received a permit would be required to meet the new BPT effluent limitations upon commencement of discharge. For previously permitted dischargers compliance should be required as soon as practicable. In some cases, where the treatment facilities in place are capable of meeting the new limitations, this may require immediate compliance. Additional time to meet new limitations should only be given where the level of control required by the new limitations is substantially greater than that required by the existing permit or where the new limitations are based on new or significantly different control technology.

New section 301(b)(3)(B) establishes compliance dates for effluent limitations based on the permit writer's best professional judgment under section 402(a)(1) of the Act. BPJ limitations may be imposed either where effluent limitations guidelines under section 304(b) have not been established or where limitations in addition to the guideline are necessary to control pollutants or wastestreams not addressed by the guideline regulation. This section would not alter the compliance dates established in section 301(b)(2) for permit effluent limitations based on an effluent limitation guideline. In cases where the permit incorporates limitations based on both an effluent limitation guideline and additional limitations under section 402(a)(1), the compliance dates established in section 301(b)(2) would govern the guideline-based limitations and the compliance dates established in this subsection would govern the section 402(a)(1) limitations. In addition, it is often the case that a wastestream controlled by an effluent limitations guideline is combined with a process wastestream or a non-process wastestream, such as non-contact cooling water or sanitary wastes, controlled by BPJ limitations, prior to discharge. Where the discharged wastestream is controlled by a combination of both a guidelines based limitation and a BPJ limitation, the compliance dates established in section 301(b)(2) would govern.

### OCEAN WAIVER

This section establishes restrictive conditions on the qualifications of applicants for a section 301(h) waiver and the ocean waters into which they discharge. In order to apply for a section 301(h) ocean discharge waiver, a municipal treatment facility must be in compliance with applicable pretreatment regulations. In the absence of Federal categorical pretreatment standards, treatment works serving a population of 5,000 or more persons must be enforcing a comparable pretreatment program to insure the control of toxic pollutants at the time of application.

The applicant must also be providing a minimum of primary treatment of their municipal effluent, including disinfection where appropriate, at the time the waiver becomes effective.

Conditions are placed on the characteristics of the offshore waters into which the applicant plans to discharge. Marine waters must exhibit physical and tidal characteristics which would assure sufficient flushing action to eliminate significant concentrations of municipal effluent discharged. The level of effluent concentration should not result at any time in a deleterious effect on the chemical or biological quality of marine waters or their uses.

No discharges should be permitted into saline estuarine waters which do not support a balanced indigenous population of shellfish, fish, and wildlife, or allow recreation in and on the waters, or do not meet applicable water quality standards or other standards necessary to support aquatic protection or recreational uses. This provision is intended to disallow effluent discharges into estuarine waters which have been stressed by previous or existing pollution by other point and nonpoint discharges. The presence of a balanced indigenous population is to be determined by comparison with the shellfish, fish and wildlife population of an estuary of similar physical, tidal, and geographic characteristics.

Section 301(j) is amended to allow a period of thirty days after enactment for a publicly owned treatment works with an existing contract to discharge its sewage into another treatment works which has applied for a section 301(h) waiver, in which to apply for such a waiver in its own right. This is intended to accomplish a narrow, specific purpose: to provide an opportunity for the Irvine Ranch Water District, a California public agency, to apply for a waiver under section 301(h). This district, which currently has a contract to discharge through the Orange County Sanitation District outfall, had been operating on the assumption that its discharge was accommodated in the application for waiver by the Orange County Sanitation District and thus the district did not apply during the period allowed by the 1981 amendments.

The Irvine Ranch Water District has made a legitimate case for special consideration, but the amendment is intended to exclude any other opportunities for application for waiver under this provision. The only special consideration provided to the District is the opportunity to apply for the waiver. Prior to its discharge into the ocean, either through its own outfall or through Orange County

Sanitation District's outfall, the District must comply with the provisions of section 301(h). The amendment limits the opportunity for application to 30 days after enactment. The Environmenal Protection Agency, however, should provide the District with the time necessary to demonstrate compliance with the requirements of section 301(h) so long as the application is promptly submitted within the time required and the District demonstrates due diligence in meeting the requirements for a waiver.

### WATER QUALITY AFTER THE ATTAINMENT OF BEST AVAILABLE TECHNOLOGY

This section modifies sections 302, 303, 304, and 305 of the Act, to provide for the development of water quality based effluent limitations after the implementation of best available technology (BAT) and the designation of State water quality standards consistent with the objectives and goals of the Clean Water Act.

States are required to undertake a progressive program of toxic pollutant load reduction where BAT is not sufficient to meet State water quality standards and support public health and water quality objectives of the Act. The following scheduled requirements are included in this provision.

(1) Under new section 305(c), within two years of enactment of the Clean Water Act Amendments of 1983, States must identify those water bodies within or adjacent to them which will not meet State water quality standards because of toxic pollutants after the implementation of BAT.

(2) Under new section 303(c)(2)(B), whenever a State reviews or revises existing water quality standards or adopts new standards, it must adopt numerical criteria for those toxic pollutants which could reasonably be expected to interfere with designated water uses and set such criteria at the levels necessary to support such uses. States shall establish specific numerical criteria based on the Environmental Protection Agency's existing national water quality criteria and other sources. A State may also utilize toxic pollutant criteria based on biomonitoring techniques or assessment methods to supplement numerical criteria. While numerical criteria are immediately required for toxic pollutants which are highly persistent, bioaccumulative, or known or suspected carcinogens, mutagens, or teratogens, for other toxic pollutants biomonitoring can be used until numerical criteria can be developed.

(3) Under new section 304(a)(8), the Administrator, in consultation with appropriate State agencies, is to provide information within two years of enactment of the Clean Water Act amendments of 1983, on methods of establishing criteria with biomonitoring assessment techniques.

(4) Under new section 303(d)(4), not later than two years after the identification of water bodies with toxic pollutant water quality standard problems, States must establish effluent limitations for individual dischargers into such water bodies, based on established toxic pollutant criteria and adequate to attain water quality standards. These effluent limitations must be incorporated into permits which must be complied with no later than three years after the establishment of the effluent limitation.

Section 303(c)(2) of the Clean Water Act is amended by incorporating provisions based on existing water quality standard regulations and the stated goals and objectives of the Act, restricting the downgrading of State water quality standards. In revising existing standards or adopting new water quality standards, States are not to adopt uses that would require less stringent criteria than those in existing standards unless a State demonstrates that such standard is unattainable. A new or existing use is regarded as attainable unless natural background levels of pollutants or irretrievable man-induced conditions in the water body preclude its achievement, or where achievement of the standard through controls more stringent than technology standards required by the Act would result in substantial and widespread adverse social and economic impact. States are required to upgrade use designations to reflect the level of water quality actually being attained where currently the water quality standard includes a less protective or beneficial use.

To demonstrate that a use is unattainable a State must submit to the Environmental Protection Agency a detailed analysis and supporting data. Under the October 1982 proposed regulations, while a use attainability analysis is subject to EPA review and approval, deference would be given to the State analysis and determination. In any event the Agency should take quick action on any State's proposed revision of its water quality standards, and not prolong review. To the extent consistent with sections 303(d)(1)(D) and 316(a), the provisions for downgrading use designations also apply to thermal water quality standards.

The amendments to section 303(c)(2) also codify a portion of the existing water quality standards regulations required by current law, under which States must implement an antidegradation policy which would assure that existing uses and the level of water quality necessary to support those existing uses shall be maintained and protected and that where existing quality exceeds those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality will also be maintained and protected. In this context, protection means no injury to or interference with the existing use or quality. The only case where such existing levels need not be maintained is where the State finds, subject to the intergovernmental coordination and public participation provisions of its continuing planning process, that lower water quality is necessary to allow economic or social development essential to the area, that there are no feasible and prudent alternatives to such water quality impact, and that all practicable measures to control point and nonpoint sources to limit such effects on water quality will be taken. The States shall provide for an adequate margin of safety in establishing water quality criteria, in any case where such degradation is allowed. No degradation at all is allowed in outstanding National resource waters such as those in National or State Parks, wilderness areas, wildlife refuges, wild or scenic rivers, and other waters of exceptional recreational or ecological significance.

Section 302(a) of the Act, as amended by the reported bill, provides for effluent limitations to be established whenever, in the judgment of the Administrator, a water body will not attain or maintain the level of water quality which will assure protection of public health, public water supplies, agricultural and industrial uses and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, even after the application of all the technology-based requirements of the Act, or whenever such a water body has been identified under new section 305(c)(1)(B). For such water bodies, the Administrator must establish effluent limitations for any point sources interfering with attainment or maintenance of that level of water quality, providing a degree of control which can reasonably be expected to contribute to attaining or maintaining the required water quality.

Ordinarily, State water quality standards established or revised under section 303 designate the uses specified in section 101(a)(2) of the Act, and if implemented through adequate criteria, waste load allocations, and effluent limitations in permits, will protect the level of water quality addressed by section 302(a). The Administrator is to use the authority of section 302(a), however, where compliance with best available technology requirements or the State water quality standards process are not attaining this level of water quality, due to point sources.

Under section 302(b), as amended, the Administrator is permitted, with the concurrence of the State, to modify effluent limitations for non-toxic pollutants established by the Administrator under section 302(a) if the applicant demonstrates at the time the effluent limitation is proposed that there is no reasonable relationship between the economic and social costs and the benefits to be obtained from achieving the proposed limitation.

The Administrator, with the concurrence of the State, may also modify effluent limitations established under section 302(a) for discharges of toxic pollutants, for a single period not to exceed five years, if the applicant demonstrates at the time the effluent limitation is proposed that the modified requirement represents the maximum degree of control within the economic capabiity of the owner of the particular source, and will result in reasonable further progress (beyond BAT) toward attaining the level of water quality specified in section 302(a). The provisions of new section 302(b)(2) apply only to effluent limitations established by the Administrator under section 302(a).

New section 304(l) requires the Administrator to promulgate within three years effluent limitation guidelines for industrial categories for which guidelines have not been promulgated prior to enactment of this bill. Guidelines are required for any category of sources discharging significant amounts of toxic pollutants. In this use, "significant amounts" does not require the Administrator to make any determination of environmental harm; any non-trivial discharges from sources in a category should lead to effluent guidelines. This requirement does not effect the Agency's obligations to publish effluent guidelines under the toxic pollutant Consent Decree.

### INDIRECT DISCHARGE OF CONVENTIONAL POLLUTANTS

In cases where a publicly owned municipal treatment works is not able to meet the requirements of its permit because of operational, mechanical, or design failures, the administrator should not require pretreatment of conventional pollutants by indirect dischargers to allow the treatment works to meet the conditions of their permits. The Committee recognizes that in such circumstances the burden of correction of the problem may more appropriately lie with the publicly owned treatment works itself through adjustment of its facilities or operation. This provision does not modify or limit the Administrator's authority and obligation to promulgate pretreatment standards which regulate pollutants which interfere with a publicly owned treatment works. It does not affect a discharger's obligation to comply with Federal, State, and local pretreatment requirements. The Administrator's enforcement authorities against indirect dischargers or municipalities under the Act are not limited by this provision. Nor does it restrict a POTW from imposing any treatment conditions it chooses on its contributors.

### CIVIL AND CRIMINAL PENALTIES

This section amends section 309 of the Clean Water Act relating to civil and criminal penalties.

Presently the Clean Water Act provides two civil enforcement options. When faced with a violation of the Act, the Administrator may issue an order requiring compliance by the violator or the Administrator may bring a civil action in the appropriate United States District Court for penalties and injunctive relief.

These amendments would allow the Administrator a third option: to assess civil penalties of up to $10,000 per day (not to exceed $75,000 total). Under this approach, a violator would be given notice and an opportunity for a hearing and if dissatisfied with the final assessment he would be able to seek review in a United States District Court. Administrative hearings shall not be subject to the requirements of section 554 or 556 of title 5, United States Code. The Administrator may, however, invoke the procedures set forth in those sections. In either case, any court review would be a *de novo* trial proceeding. The bill specifies certain factors which must be considered by the Administrator when the penalty is assessed. If not paid, assessed penalties would be subject to collection actions brought by the Attorney General in United States District Court.

The addition of administratively assessed civil penalties as an enforcement tool gives the Agency more flexibility to deal with noncompliance situations. A nonpenalty administrative order may be ineffective in resolving the problems and yet the option of taking judicial action may be unreasonably costly, burdensome, and time consuming for all the parties involved given the nature of the violation involved.

The Agency's experience to date with assessing similar civil penalties existing under other environmental statutes (CAA, FIFRA, TSCA, SWDA) indicates that this option will give EPA more enforcement flexibility, lead to speedier compliance, and assure due process without the expense and delay of a judicial enforcement action.

These amendments would also increase the daily maximum civil penalty that may be judicially imposed under section 309(d) of the Clean Water Act from $10,000 per day to $25,000 per day. This is consistent with the provisions of the Clean Air Act and the Resource Conservation and Recovery Act and strengthens existing enforcement mechanisms.

Knowing violations of the Act have caused serious environmental harm and millions of dollars of damage to private and public property. In some cases, they have raised the clear potential for loss of life and serious personal injury. A stronger criminal sanction is needed under the Clean Water Act to deter these violations.

These amendments would elevate penalties for knowing violations of the Act to the felony level and add criminal sanctions to the Clean Water Act for persons who knowingly or negligently introduce into a sewer system or a POTW, a pollutant or hazardous substance which causes or can reasonably be anticipated to cause personal injury or property damage.

The addition of these criminal penalties will, put violations of the Act on the same level as violations under RCRA. Currently, a knowing discharge onto the ground of hazardous wastes could subject the discharger to felony sanctions under RCRA. However, the same discharge into a sewer system or a POTW would only subject the discharger to the misdemeanor provisions of the Clean Water Act. The result is an unintentional incentive to dump hazardous substances into sewer systems or POTWs. The addition of these criminal sanctions will aid in protecting these sewer systems and POTWs in which substantial Federal monies are invested.

Strong public support exists for aggressive enforcement action in cases of environmental misconduct. The addition of criminal sanctions to the Act for knowing violations of the Act will reflect this public concern and should dispel any perceptions that a knowing violation of the Act is not a serious offense.

### PARTIAL NPDES PROGRAM APPROVAL

This Section amends section 402 of the Clean Water Act to permit the Administrator of the Environmental Protection Agency to delegate a portion of the National Pollutant Discharge Elimination System program to a State under certain conditions.

A State would have two options. Under either option, the Governor must submit a plan to the EPA for approval. Such a plan must either show that the State is prepared to administer program components representing a significant part of the State program, and be prepared to make all reasonable efforts to assume administration of the total program within the ensuing five years, or the plan must provide for administration of a permit program for all of one or more discharge categories. Under this second option, the plan must cover all categories of discharges and represent a complete permit program for all categories of discharge under the jurisdiction of the State.

In the event that a State wishes to return NPDES program administration authority to the Federal Government, or in the event the Administrator withdraws approval of a State-operated program, the entire program must be returned to the Federal Government.

Current law with respect to the assumption of NPDES program authority by States has been interpreted to require the immediate assumption of the entire NPDES program as it is administered by EPA. Consequently, States with wastewater permitting responsibilities divided among more than one agency or with resource difficulties, either of which limits the State from assuming the entire program, have been precluded from assuming the NPDES program.

For example, the State of Texas divides wastewater permits between the Texas Department of Water Resources and the Texas Railroad Commission. While the Texas Department of Water Resource, which does the vast majority of permitting, has sought NPDES assumption, the Texas Railroad Commission, which is responsible for oil and gas exploration and production permitting, has not yet sought assumption. Current law has thus prevented the Texas Department of Water Resources from obtaining assumption of the program.

The Committee believes States should be tested against their ability to operate an effective permit program and should be encouraged to assume NPDES permitting authority. Current law works against both of these objectives. For this reason, the bill includes these modifications to enhance the opportunities for States to develop NPDES programs and assume this responsibility.

### NPDES PERMIT TERM AND REOPENER

This section amends section 402 relating to permit terms and reopeners. The current five-year limitation on NPDES permits is changed to a maximum of ten years for permits which do not include a waiver or modification of any otherwise applicable requirement under section 301 (e), (g), (h), or (m) of the Act. The limitation on permits which do include such waivers or modifications remains at five years.

Section 402 is also amended to provide for prompt modification of NPDES permits whenever more stringent requirements or new pollutant controls are established under section 301, 302, 303, 304, 307, 403, or 405 of the Clean Water Act which would relate to individual permit requirements.

Under the National Pollutant Discharge Elimination System established in section 402, point sources discharging pollutants to navigable waters must apply for and receive permits authorizing such discharges. These permits are issued either by the Environmental Protection Agency or by States which have been delegated the permit program. The current maximum term for an NPDES permit is five years.

In the initial years of this program, the Environmental Protection Agency and the States issued approximately 65,000 permits. Most of these have now expired, resulting in an enormous backlog of permits to be renewed. In addition to this burden, EPA also receives about 2,000 applications for new permits each year.

By extending the permit term from five to ten years for permits which contain no waivers or modifications of otherwise applicable requirements, the backlog and the annual burden will be diminished with no detrimental effect to the clean water goals of the Act.

The second part of the amendment directs EPA and the States to reopen and modify any permit, ten-year or otherwise, if more stringent requirements or new controls are established.

Nothing in this provision infringes on the Agency's ability to establish shorter permit terms where it deems it appropriate. Given the wide variety of permits and recognizing that the Agency is just beginning to issue many major permits with toxic limitations for the first time, it is expected that EPA will set maximum permit terms of less than ten years for certain dischargers.

### JUDICIAL REVIEW AND ATTORNEY'S FEES

This section revises the provisions of section 509 of the Clean Water Act governing judicial review of certain actions of the Administrator of EPA and provides for the awarding of costs of litigation in actions brought pursuant to section 505 or 509 to prevailing or substantially prevailing parties.

The purpose of the changes in section 509(b)(1) is to clarify the proper venue for court of appeals review of certain actions of the Administrator under the Clean Water Act and to extend the period within which an application for review of such actions must be filed from ninety to one hundred and twenty days.

Section 10(a)(1) provides that proper venue for judicial review under section 509 of the Act shall be in the Circuit Court of Appeals of the United States for the Federal judicial district in which the applicant resides or transacts business which is directly affected by the action in question.

Currently section 509(b)(1) provides for venue in the Circuit Court of Appeals of the United States for the Federal judicial distict in which the applicant "resides or transacts such business". This phrase is inherently ambiguous because the word "such" has no antecedent. The legislative history of this phrase is also ambiguous and is not consistent with the plausible interpretation, urged by the Department of Justice, that the words "such business" refer to business which is directly affected by the action which is the subject of the application for review. The two courts of appeals which sought to construe this phrase, the Fifth Circuit in *Tenneco Oil Co.* v. *EPA,* 592 F. 2d 897 (1979), and the Eighth Circuit in *Peabody Coal Co.* v. *EPA,* 522 F. 2d 1152 (1975), ultimately avoided ruling on its meaning and proper venue for section 509(b) cases remains unsettled. In order to eliminate, or at least reduce, the potential for threshold litigation over proper venue, the Committee amendment changes the venue provision so that the language conforms to the reading of current law which has been suggested by the Department of Justice. The intention of the Committee is to allow the filing of an application for review in the circuit in which the applicant resides, i.e., has his principle place of business, or where he transacts business which is directly affected by the action of which he complains. For example, in a case in which the action complained of is a denial of a permit for a proposed facility, the direct effect of the action would be felt only at the location of the proposed facility, even though indirect effects of the action might be felt at other facilities of the company.

Section 10(a)(2) changes from ninety to one hundred and twenty days the period within which an application under section 509 of the Act for judicial review of an action must be made.

The purpose of this change is to assure that persons who will be significantly affected by an action of the Administrator will have ample opportunity to assess the consequences of such action and if necessary file an application for review prior to the expiration of the time period. The Committee has previously considered this issue in a different but similar context (Senate Report No. 97-666 at pp. 94-5) and has concluded that one hundred and twenty days is a reasonable period within which to require the filing of an application for review.

Section 10(b) establishes a random selection procedure, to be administered by the Administrative Office of the United States Courts, to determine in an orderly fashion the court of appeals in which an agency action is to be reviewed when applications for review have been filed in two or more courts of appeals. Following the selection of a court of appeals, other courts in which applications have been filed are directed to promptly transfer such applications to the court in which the agency record has been filed. Notwithstanding the outcome of the random selection procedure, any court in which an application has been filed would retain the power to transfer the application to any other court of appeals for the convenience of the parties or otherwise in the interest of justice. The court of appeals would also be given the power to award costs of litigation to a prevailing or substantially prevailing party when such an award is appropriate.

Section 10(c) limits the award of costs of litigation in citizen's suits under section 505(d) of the Act to prevailing or substantially prevailing parties.

The purpose of the random selection procedure is to eliminate the "race to the courthouse" phenomenon and provide for an orderly means of consolidating applications for review of the same agency action. The Committee wishes to emphasize that this process is not intended to preclude any court of appeals from exercising its inherent power to transfer an application for review to any other court of appeals for the convenience of the parties or otherwise in the interest of justice.

Section 509(b)(3)(B), as amended, provides new authority for any court of appeals to grant a temporary stay of the effective date of a final agency action pending selection of the court of appeals in which the action will be reviewed. However, it is not the intention of the Committee that stays should be granted unless the same requirements that ordinarily apply to an application for a stay of an agency action are fully satisfied.

The purpose of the new section 509(b)(4) and the amendment to section 505(d) is to clarify the circumstances under which costs of litigation may be awarded. In *Sierra Club* v. *Gorsuch*, 672 F. 2d 33 (D.C. Cir 1983), *rev'd sub nom., Ruckelshaus* v. *Sierra Club*, 51 U.S. L.W. 5132 (July 1, 1983), the court of appeals held that it was "appropriate" to award attorney's fees under the Clean Air Act to the petitioner even though the government prevailed on all issues. The

Committee does not believe that it is reasonable or appropriate to compel either the government or a private party to pay the costs of an opposing party to a lawsuit when the opposing party has not prevailed on the issues. Accordingly, these amendments would limit the awarding of costs under the Clean Water Act to prevailing or substantially prevailing parties.

These amendments are not intended to preclude the awarding of costs to a partially prevailing party with respect to the issues on which that party has prevailed, if such an award is deemed appropriate by the court. Nor does the Committee intend to authorize an award of costs to a party who intervenes in a case and, although technically on the prevailing side, fails to make a substantial contribution to the successful outcome of the case.

In addition, the Committee recognizes that a party may "prevail" by achieving a successful settlement.

### NONPOINT SOURCE POLLUTION

This section provides funds to support management programs to control nonpoint source pollution. Requirements for these programs have not been included in S. 431, but it is the Committee's intent to develop an amendment to the bill containing such requirements before the bill is considered by the Senate.

Committee hearings on nonpoint source problems confirmed that pollution from nonpoint sources is a significant nation-wide problem that requires immediate attention. Nonpoint source pollution, which may include runoff from paved areas, agricultural and silvicultural lands, mining areas, and construction sites, contributes large amounts of toxic metals and organic pollutants, fertilizers, pesticides, sediments, and other important pollutants to the nation's waters. In some areas, nonpoint sources are the major cause of water quality problems and, unless management programs are implemented, will preclude attainment of water quality standards and the goals of the Act. As additional reductions in pollutant discharges are achieved by point sources, the relative importance of nonpoint sources will increase.

The hearings also established that substantial planning to reduce pollution from nonpoint sources has already been accomplished under Federal and State programs and that future emphasis should be on implementation of control strategies. The Committee proposal will be directed at expediting the adoption and implementation of control measures.

S. 431, as reported, contains a significant funding level of $150 million per year for four fiscal years to assist in the nationwide implementation of nonpoint source control strategies.

### STORMWATER RUNOFF FROM MINING OPERATIONS

This section adds a new subsection (1) to section 402 of the Clean Water Act, specifically exempting certain stormwater runoff discharges from permit requirements and effluent limitations. Discharges from mining operations or oil or gas exploration, production, processing, or treatment operations are covered by this provision. To be exempted, such discharges must be composed entirely of flows of precipitation, runoff from conveyances or systems of conveyances used for collecting and conveying such water. Such flows cannot be contaminated with process wastes, overburden, raw materials, toxic pollutants, hazardous substances, or oil or grease. The Administrator shall determine what constitutes contaminated runoff for the purposes of this subsection. Examples of contamination include heavy metals or suspended or dissolved solids from process wastes or disturbed soils, salts, surfactants, or solvents used or produced in the mining or oil and gas operations, or contaminated runoff from operations upstream. Runoff exempted under this subsection from effluent limitations may still be subject to stormwater management practice requirements or other nonpoint source controls.

### ANTI-BACKSLIDING

This section adds a new subsection to section 402 of the Clean Water Act, relative to renewal or reissuance of NPDES permits. Unless a previously permitted source can demonstrate that installation of required treatment facilities and adequate operation and maintenance of such facilities has failed to achieve the permitted effluent limitations, a renewed or reissued permit shall not contain less stringent effluent limitations, standards or conditions than in the previous permit. If such demonstration is made, the limitations in the renewed or reissued permit may reflect the level of control actually achieved, but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal or reissuance.

### SEWAGE SLUDGE

The purposes of this provision are (1) to establish a new timeframe for promulgation of sewage sludge use and disposal criteria originally required by the 1977 amendments; (2) to require expedited regulation of problem contaminants; (3) to provide public health and environmental nationale for sludge criteria development for sludge criteria development, and (4) to establish deadlines for compliance with the sludge criteria.

The provision requires the Administrator to identify within six months of enactment of the Clean Water Act Amendments of 1983, which toxic pollutants may be present in sewage sludge, and may adversely affect public health or the environment. These toxic pollutants are those on which the Agency currently has available information on the toxicity, persistence, concentration, mobility, or potential for exposure on which to base use and disposal criteria.

Within 18 months of enactment, the Administrator is to publish regulations specifying acceptable management practices for sewage sludge containing these toxic pollutants and establish numerical limits for all identified uses of sludge adequate to protect public health and the environment. Compliance with these regulations is required no later than six months after their publication.

The Administrator is to identify within 18 months, those potentially harmful toxic pollutants which may be present in sludge that have not been identified in the first group of pollutants.

The Administrator is to publish regulations on management practices and numerical limits for each identified use for these pollutants within 30 months of enactment. Compliance with these regulations is required no later than six months after their publication.

The Administrator may promulgate a design, equipment, management practice, or operational standard for toxic pollutants in the second group if it is determined feasible to prescribe or enforce a numerical limit.

### INTERSTATE DISPUTE RESOLUTION

Section 402 of the Clean Water Act is amended to require the Administrator to finally decide disputes between States as to whether a discharge for which one State proposes to issue a permit will violate water quality requirements or adversely affect public health in another State. Under current law, a State whose waters may be affected by the issuance of a permit in another State may submit recommendations to the permitting State. If those recommendations are not accepted by the permitting State, the Administrator may object to the issuance of the permit.

New section 402(d)(2)(b) requires the Administrator to decide the merits of such a dispute. Where the permitting State fails to accept the recommendations of the downstream State, the Administrator shall determine whether any violation of a water quality standard, adverse effect on public health, or other harm to the water quality of the downstream State would result from the issuance of the permit. If so, the Administrator must object to the issuance of the permit. Any determination by the Administrator under this provision would constitute the issuance or denial of a permit and would be subject to judicial review under section 509(b). Thus a State dissatisfied with the Administrator's decision could seek review in the U.S. Court of Appeals for the appropriate circuit.

In addition to the procedure under section 402(d)(2)(B) for resolving disputes over proposed permits, under new section 402(b)(1)(F) a permit which is in effect shall be reconsidered for termination or modification when a downstream State provides notice that the permitted discharge is adversely affecting the waters of such State and seeks a modification of the permit. Then, in the permit proceeding to terminate, or modify, or reissue the permit, the affected State may make recommendations under section 402(b)(5) and if they are not accepted, section 402(d)(2)(B) governs. The phrase "adversely affecting the waters of such State" means the type or level of effect which would lead a State to submit recommendations under section 402(b)(5).

A new section 511(e) is added, providing a new method of resolving disputes between States over the effects of activities in one State on the water quality of another State. The provision is intended to address sources of pollutants not covered by permits, and therefore not subject to the interstate dispute resolution mechanism of section 402(d)(2)(B). Under section 511(e) a State or municipality which alleges that its water quality is being adversely affected by pollutants or contaminants from another State may petition the Administrator. The Administrator must then determine on the record, after a hearing under the Administrative Procedure Act, whether such pollution is endangering public health or welfare or causing or contributing to a violation of water quality requirements in the downstream State.

If the Administrator so determines, the Administrator must issue an order restraining any permit causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of the Clean Water Act and other equitable considerations. Such an order is judicially reviewable. This is very broad authority, comparable to that under section 303 of the Clean Air Act or section 7003 of the Solid Waste Disposal Act for situations involving imminent and substantial endangerment. The Administrator should exercise great care in fashioning remedies under this authority. In addition to the adjudicatory hearing called for in section 511(e), the Administrator may wish to convene a more informal management conference involving the affected States and municipalities to frame the issues and facilitate a resolution. Such conferences would be similar to the enforcement conference under the Federal Water Pollution Control Act prior to 1972. The determination and any administrative order issued under section 511(e), however, would be the responsibility of the Administrator.

The question in both section 402(d)(2)(B) and section 511(e) is whether activities in one State adversely affect water quality or public health in another State. The phrase "other demonstrated harm" is limited to water quality-related concerns. Economic or other competiton between States is an inappropriate motive and impermissable grounds for the use of either section 402(d)(2)(B) or section 511(e). In weighing the equities under either section, the Administrator should not allow the imposition of controls in the upstream State, at the instance of a downstream State, which the downstream State is not willing to impose on similar sources within its boundaries affecting the same water body.

## PRESERVATION OF OTHER RIGHTS

This section amends section 505 of the Clean Water Act, the citizen suit provisions, to clarify that nothing in the Act displaces, preempts, or limits any rights or liabilities under State common law, nor the ability of any person injured by noncompliance with any Clean Water Act requirement or permit to seek damages under other Federal Statues. In addition, new subsection (e)(4) makes it clear that State law applies in cases of interstate pollution.

The first sentence of this new paragraph provides that any person injured by an act or activity which might constitute water pollution or be regulatable under the Clean Water Act, may seek and be granted relief provided under the statutory or common law of the State in which such person resides or in which the claim arose. Such relief may be granted only to the extent provided under such State law. This sentence supports the declaration in subsection (e)(2) that State common law is not displaced or preempted by the Clean Water Act.

The second sentence of section 505(e)(4) provides that States or municipalities may bring actions involving State law, in cases involving water pollution arising in another State, in Federal district court, in either the State bringing the action or the State in which the cause of action arose. This will provide access to a neutral forum, the Federal courts for resolution of interstate disputes, for States and municipalities which are not now covered by 28 U.S.C. 1332, the statute granting jurisdiction to Federal courts based on diversity of citizenship of the parties.

### HAZARDOUS WASTE PRETREATMENT STUDY

Section 516 of the Clean Water Act is amended to require the Adminstrator of the Environomental Protection Agency to submit to Congress a report on hazardous wastes excluded from regulation under the Solid Waste Dispoal Act, specifying the types and quantities of such wastes and including recommendations on whether or not existing law is adequate to protect human health and the environment from dangers associated with such wastes. The study is to be submitted within two years of enactment of the Clean Water Act Amendment of 1983.

The hazardous wastes at issue are those specifically exempted from regulation as waste mixtures that pass into publicly owned treatment works. There is a potential that such wastes can have an impact on public health and the environoment. The Committee believes that this study is necessary in order to determine if additional legislative controls are needed.

### HAMPTON, N.H. AD VALOREM TAX AMENDMENT

This section permits the Town of Hampton, New Hampshire, to continue using its ad valorem tax user charge system for collecting the costs of operation and maintenance of its sewage treatment works. Previously, Hampton had been unable to submit its ad valorem tax system to the Environmental Protection Agency for review and approval because of a disagreement over whether the tax system was dedicated to this purpose as of December 27, 1977. The Committee finds that Hamption's ad valorem tax system was in place and in operation as of this date, and therefore is deemed to have been dedicated as of this date. The Committee also finds that Hampton developed a user fee tax system only under duress, and such system was never implemented. It is the Committee's understanding that Hampton's ad valorem tax meets all the remaining requirements of section 204(b)(1) and other related regulations, and the Agency is to review the system for compliance.

### COST OF LEGISLATION

Section 403 of the Congressional Budget and impoundment Control Act requires a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement was unavailable at time of filing.

### EVALUATION OF REGULATORY IMPACT

In compliance with section 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill.

The reported bill requires effluent limitations to be established to protect the nation's waters from additional degradation due to toxic pollutants. This is not new authority in the Clean Water Act but simply augments authority that has existed since 1972. It is not expected that there will be any new regulatory burden created by this clarification of existing law.

## ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

During the Committee's consideration of S. 431 no rollcall votes were taken.

The Committee vote to report S. 431 is announced as 14-0.

Voting in the affirmative to report the bill from the full Committee were Senators Stafford, Baker, Domenici, Chafee, Simpson, Durenberger, Humphrey, Randolph, Bentsen, Burdick, Hart, Moynihan, Mitchell, and Baucus.

## HEARINGS

The Subcommittee on Environmental Pollution held hearings in both the 97th and 98th Congress on the nonmunicipal portions of the Clean Water Act. Over two thousand pages of testimony and exhibits have been included in the hearing record. All hearings have been conducted in Washington, D.C.

The Subcommittee had three mark-up sessions, June 14, 16, and 22. The Full Committee conducted 1 mark-up session and on June 28, 1983, voted to order the bill reported.

At the time the bills were reported the following bills were pending before the Committee:

S. 432. Clean Water Compliance Date Extension Act of 1983.

S. 1536. A bill to amend the Clean Water Act relating to discharges into ocean waters.

The issues raised by these pieces of legislation are addressed in S. 431.

## ADDITIONAL VIEWS OF SENATORS SIMPSON, ABDNOR, BURDICK, AND SYMMS

Since the decision of the Supreme Court in the case of *Milwaukee* v. *Illinois,* 451 U.S. 304 (1981) (generally referred to as "*Milwaukee II*") various attempts have been made to overturn that decision and to "revive" the "federal common law of nuisance". At our hearings on S. 431, this Committee received considerable testimony on the feasibility and desirability of resuscitating federal common law, and, after weighing the arguments on both sides, wisely chose not to attempt to do so.

The bill now reported by the Committee does, however, contain provisions which are intended to address problems which it apparently fears the *Milwaukee II* decision may cause. Section 16 is intended to improve and add to existing procedures for the resolution of interstate disputes. Section 17 is intended to insure that state law is not automatically preempted by the Federal Clean Water Act. The purpose of these two sections is laudable, but unfortunately the language of both sections is overly broad and may well create some of the same disruptive and counterproductive effects that the Committee sought to avoid when we chose not to overturn the *Milwaukee II* decision.

Three aspects of Sections 16 and 17 are particularly troublesome.

Section 16(a) would allow a state to block the issuance of an NPDES permit by another state by showing to the Administrator of EPA that the issuance of such permit will result in "any violation of a water quality standard of the affected state, adverse effect on public health, *or other deomonstrated harm to the interests of the affected state* . . ." (emphasis added). This language appears to allow a downstream state, for reasons which may be purely economic or political, to block the issuance of a permit to a facility which might well satisfy all permit requirements applicable in the downstream state and pose no threat whatsoever to the water quality standards or public health of such state. Clearly a downstream state should have some means of protecting itself from water quality violations or adverse effects upon public health, but it is equally clear that allowing downstream states to block the issuance of permits which "harm" their "interests" goes far beyond the protection or water quality and creates an enormous potential for abuse and unfair discrimination against out-of-state companies.

Section 16(c) would allow a State or municipality, the water quality of which is adversely affected by pollutants or contaminants from another state, to petition the Administrator under Section 511 for a restraining order or other appropriate relief. The Administrator would be required to determine whether such pollution or contamination causes "demonstratable harm", and upon making a positive determination he would be required to take appropriate action which would then be judicially reviewable. A State could initiate this petition process against a permitted facility in another state even when the downstream State has previously challenged the permit under Section 402 and the permit has been upheld. Section 16(c) would thus provide a State seeking to block or revoke a permit in another state with a wholly unnecessary "third bite at the apple", but, more critically, it would provide a mechanism for imposing Federal regulation upon nonpoint sources of water pollution, including agriculture, silviculture, and livestock operations. Pollution from nonpoint sources is a serious problem which deserves attention, but attempting to solve it through an ad hoc, adversary process, the product of which would then be litigated in Federal court, seems to us a very unlikely approach to produce a "solution" that would please anyone and it is certain to put an enormous strain on the administrative and legal resources of both EPA and the states involved. It may also result in the reallocation of water resources between the states. Appropriate control of nonpoint sources will require close and prolonged cooperation between the states and EPA and possibly the most useful action EPA can perform at this point is to provide incentives to the states and assist them in their efforts to deal with the problem. This amendment would only generate confrontation between the states and coercion by the Federal Government. Another troublesome aspect of this provision is that it would allow not just other states, but municipalities and Indian Tribes to initiate an action against a state, further increasing the volume of litigation which will assuredly result.

Section 17 of the bill purports to simply reserve existing legal rights under State common law or State or Federal statutes—an unexceptionable purpose. However, the new paragraph (4) which would be added to Section 505(e) of the Clean Water Act by Section 17 would go well beyond preserving existing rights. Apparently, it was intended only to allow states access to Federal district court on the same basis and to the same extent now afforded an individual in diversity of citizenship cases, but paragraph (4) could also be interpreted as creating a wholly new Federal cause of action in cases involving water pollution, which would of course entail all of the problems associated with the "Federal Common Law of Nuisance", a most undesirable result. At the very least, the proposed language would require wasteful litigation before its meaning could be determined.

As previously noted, the basic intention of Sections 16 and 17 is laudable. However, the legislative execution of this intention is so badly obscured and laboriously presented that unless the language is substantially rewritten, that fine intention will be thoroughly frustrated and far more problems will be created than will ever be resolved. We have enough confusion in the law without resurrecting in another form the Federal Common Law of Nuisance. It is better to leave it buried with other outmoded and unnecessary legal precedents.

Alan K. Simpson.
Quentin N. Burdick.
Steve Symms.
James Abdnor.

## SUPPLEMENTAL VIEWS OF SENATOR SYMMS

Although I support the Committee passed bill, I believe the Committee missed an excellent opportunity to enhance the goals of the Clean Water Act and the regulations that accompany it. As originally written, S. 431 contained a provision which would provide a publicly owned treatment works (POTW) with a chance to develop and implement their own alternative pretreatment program, in lieu of the national categorical standard approach. The EPA Administrator and many members of the Committee supported this approach, since it would reward POTW's that had developed the most successful pretreatment programs, and allow them to continue their local programs as a model to other POTW's that were not as advanced. It is important to note that under the provision, there would be no decrease in water quality.

The alternative pretreatment provision, had it been retained in S. 431, would have provided those POTWs with the legal, financial and technical capability to develop and implement a pretreatment program designed to address their local geographic, economic and environmental needs. Under this strict provision, which required the approval of the EPA Administrator, no more than 75 POTWs around the nation were expected to meet the rigorous qualification requirements for the privilege of administering their own pretreatment program.

Under the existing regulatory framework, any POTW desiring to apply for the alternative program would have been under a strict time frame to make its application. The POTW would have to demonstrate that it had in effect an EPA-approved pretreatment program, that the POTW had the ability to enforce its standards, and that it had the technical ability to operate and monitor the alternative approach.

As I stated, only 75 POTWs were expected to qualify. The remaining POTW's, approximately 1,900 in number, would have been subject to the standards established under the national categorical approach.

I remain committed to the need for an alternative to the rigid national categorical standard approach. Those POTWs that can demonstrate a sophistication to develop and implement their own pretreatment programs should be permitted to do so as long as the resulting water quality is the same. The existing approach is unnecessarily cumbersome and elaborate, and, in many cases, results in a different standard for the same toxic pollutant for various industrial categories. This national approach was developed in a courtroom. It has no relevancy to the true environmental conditions of an area, unlike the alternative approach that is tailored to the specific industrial base and environmental needs of an area.

During our hearings on the issue of pretreatment, the Committee was told that the solution to the hardships imposed by the categorical approach would be accomplished by the granting of removal credits. Further testimony on this process, however, illustrated the attendant legal, financial and administrative burdens inherent in the removal credits program itself. No program is successful if there are few or no participants. Many POTWs, have stated their reluctance to take advantage of this program because of the complexities that accompany it.

In addition, the secondary costs imposed by the categorical approach, as well as the direct costs, far outwiegh the environmental benefits it achieves. Nonetheless, the categorical approach, although it is inflexible, may be necessary to address areas where progress has not been great. The categorical standards become less effective and clearly more expensive and burdensome in areas that have demonstrated that they can effectively pretreat waste.

### GREAT PROGRESS HAS BEEN MADE

I am very troubled over the impression left during mark-up of S. 431 that little progress has been made in the pretreatment of wastewaters. If this is true, it is directly attributable to the federal government. Before Public Law 92-500, many of the larger POTWs had developed programs to pretreat industrial wastewaters. More importantly, the programs were in place and running smoothly.

Currently, all POTWs have EPA-approved pretreatment programs or have submitted a program to EPA for approval. Proponents of the categorical standards approach argued before the Committee their concerns that anything less would jeopardize water quality. The facts, however, belie this argument. Simply stated, many current local pretreatment standards including those in Boise, Idaho, are more stringent than the national categorical standards. Even EPA Administrator Ruckelshaus highlighted this fact when he testified before the Committee, and raised his concerns that EPA would both over- and under-regulate using the categorical approach.

The record is clear. Local officials are in the best position to develop pretreatment programs to protect water quality and the operation of their treatment facilities. They are professionals, who, in the absence of federal guidelines, regulations and programs, have seized the initiative and competently attacked this critical environmental problem.

### STRENGTHS OF A LOCAL OPTION

In the course of our hearings and mark-ups on S. 431, few substantive arguments against the alternative approach were made, and I remain convinced that the valid concerns that were raised can be addressed with some modifications to the amendment. Concerns such as resource scarcity, inequity, delays, removal credits and the preservation of water quality, POTW operation and sludge quality were invoked as reasons against the provisions.

The alternative pretreatment approach would accelerate the Act's objectives because it would allow local problems to be addressed with local solutions. This tailored approach would be less costly and technically more relevant to the particular industrial base and environment. More importantly, it would utilize programs currently in place that are administratively feasible and easily enforceable. Perhaps the most critical point, however, is the environmental soundness of such a program. Through the process of targeting local conditions, we would be responding to the immediate problems of an area, instead of relying upon a national standard that may or may not be relevant to an area's water quality.

Resource limitations are a legitimate concern in any situation. Under the alternative pretreatment provision, however, the strict qualifying criteria and tight time frames for the submittal of the application itself would alleviate these concerns. Ironically, a local alternative would allow EPA and the states to target existing resources to those areas of the country that were unable to qualify for the local permit modification.

If resource limitations are important, and they are, I think the Committee should be deeply concerned over EPA's ability to carry out the categorical program affecting 2,000 POTW's, especially when EPA cites limited resources as its reason for not being able to review 75 POTW programs for adequacy. The fact is that EPA is overstating the resources necessary to implement the alternative pretreatment approach. Not only must EPA approve POTW's programs anyway, but the lion's share of the resources necessary to implement the alternative approach would come from the POTW itself, as it is charged with proving that it can carry out a local program as effectively as one which would be mandated by national categorical standards. Further testament to EPA's overstatement of resources is that in the case of Boise, Idaho's program, EPA's review took only forty-eight hours to report to the Committee that Boise was a likely candidate for a permit modification, and, in this instance, I doubt that more than a few man-hours were spent making the determination.

Possible delays in implementing effective controls were also cited as a reason to delete the issue of pretreatment from Committee consideration. But this concern is unfounded considering not only the number of effective local programs already in place, but also the Agency's continuing failure to finalize all categorical standards. In all likelihood, we can anticipate lengthy administrative and legal challenges to existing and proposed federal standards. Unfortunately, in light of these delays, it would be unfortunate if the Congress does not adopt language to allow at least the most effective local agencies the latitude to continue implementation of their own, more responsive programs.

## SUMMARY

The Committee bypassed a major opportunity when it did not act on the alternative pretreatment approach embodied in the original draft of S. 431. It is my intention to continue working with the Chairman and ranking Minority Member and the EPA in an effort to draft language that will address this lingering issue. The key question remains. *Who is in the best position to control toxic wastewaters?* I believe, given the weight of evidence and actions, that it is the local officials who are in the best position.

Local control does not mean less control. Local control means the expeditious achievement of the Act's objectives at the least economic costs associated with meeting these objectives. Local control also means addressing local problems with local solutions to meet national pretreatment objectives. In the long run, it means better, more responsive programs that acknowledge the true role of local government in the federal-state-local partnership.

STEVE SYMMS.

## CHANGES IN EXISTING LAW

In compliance with Section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

## FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED

(33 U.S.C. 466 et seq.)

AN ACT To provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### TITLE I—RESEARCH AND RELATED PROGRAMS

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### RESEARCH, INVESTIGATIONS, TRAINING, AND INFORMATION

SEC. 104. (a) * * *

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(u) There is authorized to be appropriated (1) not to exceed $100,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, and not to exceed $14,039,000 for the fiscal year ending September 30, 1980, and not to exceed $20,697,000 for the fiscal year ending September 30, 1981, and not to exceed $22,770,000 for the fiscal year ending September 30, 1982, *and not to exceed $22,770,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987,* for carrying out the provisions of this section, other than subsections (g) (1) and (2), (p), (r), and (t), except that such authorizations are not for any research, development, or demonstration activity pursuant to such provisions; (2) not to exceed $7,500,000 for fiscal years 1973, 1974, and 1975, $2,000,000 for fiscal year 1977, $3,000,000 for fiscal year 1978, $3,000,000 for fiscal year 1979, $3,000,000 for fiscal year 1980, $3,000,000 for fiscal year 1981, and $3,000,000 for fiscal year 1982, *and not to exceed $3,000,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987* for carrying out the provisions of subsection (g)(1); (3) not to exceed $2,500,000 for fiscal year 1973, 1974, and 1975, $1,000,000 for fiscal year 1977, $1,500,000 for fiscal year 1978, $1,500,000 for fiscal year 1979, $1,500,000 for fiscal year 1980, $1,500,000 for fiscal year 1981,

[and] $1,500,000 for fiscal year 1982, *and not to exceed $1,500,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987* for carrying out the provisions of subsection (g)(2); (4) not to exceed $10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (p); (5) not to exceed $15,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (r); and (6) not to exceed $10,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (t).

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### GRANTS FOR POLLUTION CONTROL PROGRAMS

SEC. 106. (a) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section—

(1) $60,000,000 for the fiscal year ending June 30, 1973; and

(2) $75,000,000 for the fiscal year ending June 30, 1974 and the fiscal year ending June 30, 1975, $100,000,000 per fiscal year for the fiscal years 1977, 1978, 1979, and 1980 $75,000,000 per fiscal year for the fiscal years 1981 [and]; 1982, *1984, 1985, 1986, and 1987*

for grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.

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### DEFINITIONS AND AUTHORIZATIONS

SEC. 112. (a) * * *

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(c) There are authorized to be appropriated $25,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, $6,000,000 for the fiscal year ending September 30, 1977, $7,000,000 for the fiscal year ending September 30, 1978, $7,000,000 for the fiscal year ending September 30, 1979, $7,000,000 for the fiscal year ending September 30, 1980, $7,000,000 for the fiscal year ending September 30, 1981, [and] $7,000,000 for the fiscal year ending September 30, 1982, *and $7,000,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987* to carry out sections 109 through 112 of this Act.

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### *CHESAPEAKE AND NARRAGANSETT BAYS*

*SEC. 117. (a) The Administrator shall continue the Chesapeake Bay program and shall establish and maintain in the Environmen-*

*tal Protection Agency an Office, Division, or Branch of Chesapeake Bay Programs to—*

*(1) collect and make available, through publications and other appropriate means, the results of and other information pertaining to research and other activities that address the environmental quality of the Chesapeake Bay (hereinafter "the Bay");*

*(2) coordinate all Federal research projects pertaining to the Bay;*

*(3) conduct research to determine the impact of sediment deposition in the Bay and to identify the sources, rates, routes, and distribution patterns of such sediment deposition; and*

*(4) conduct research on the impact of natural and man-induced environmental changes in the living resources of the Bay and the relationships between such changes. Particular emphasis shall be placed on researching the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals. Special attention shall be given to the impact of such changes on the striped bass.*

*(b)(1) The Administrator shall, at the request of the Governor of a State affected by the interstate management plan develop pursuant to the Chesapeake Bay program (hereinafter "the plan"), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of enactment of the Clean Water Act Amendments of 1983, approved and committed to implement all or substantially all aspects of the plan. Payments for such purpose may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.*

*(2) A State or combination of States may elect to avail itself of the benefits of this subsection by submitting to the Administrator a comprehensive proposal to implement management mechanisms contained in the plan which shall include (A) a description of proposed abatement actions which the State commits to take within a specified time period to reduce pollution in the Bay and to meet applicable water quality standards, and (B) the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of this Act and will contribute to the achievement of the national goals set forth in section 101(a) of this Act he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this subsection shall not exceed 55 per centum of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.*

*(3) Administrative costs in the form of salaries, overhead or indirect costs for services provided and charged against programs or projects supported by funds made available under this subsection shall not exceed in any one fiscal year 10 per centum of the annual Federal grant made to a State under this subsection.*

*(c) Any State or combination of States that receives a grant under subsection (b) shall, within 18 months after the date of receipt of a*

*Federal grant under subsection (b) and biennially thereafter, report in conjunction with EPA to the Congress on progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay program.*

*(d)(1) The Administrator shall, at the request of the Governor of an affected State, after consultation with appropriate Federal and State agencies and other interested persons, make a grant for purposes of assessing the principal factors having an adverse effect on the environmental quality of the Narragansett Bay, as perceived by both scientists and users, in conjunction with developing and implementing a management program to improve such Bay's water quality. Payments for such purposes may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.*

*(2) A State may elect to avail itself of the benefits of this subsection by submitting to the Administrator a full and complete description of the program it proposes to establish and administer under State law. The Administrator shall approve each such submitted program, within 3 months of receipt of such program, if the applicant demonstrates to the satisfaction of the Administrator that the applicant will—*

*(A) establish a committee of representatives from various units of Federal, State, and local governments, research and educational institutions, and concerned groups and individuals on the Narragansett Bay, to provide advice on the design and implementation of a management program and to coordinate communication on issues affecting the Narragansett Bay's water quality;*

*(B) coordinate, subsequent to a review of presently ongoing research, research and abatement programs that will most efficiently address those principal factors having an adverse effect on the Narragansett Bay's water quality; and*

*(C) undertake, subsequent to an analysis of all environmental sampling data being collected on the Narragansett Bay, methods for improving such data collection, particularly with respect to toxic pollutants; establish a continuing capacity for collecting, storing, analyzing and disseminating such data; institute a sampling program where deficiencies are found to exist in present sampling programs; and develop and, as soon as practicable but within three years after enactment of the Clean Water Act Amendments of 1983, implement management practices and measures (including land use requirements) to reduce to the greatest extent feasible pollutant loadings in such Bay and to improve such Bay's water quality.*

*(3) If the Administrator approves a program submitted under paragraph (2) of this subsection, he shall finance the costs of implementing segments of such program, except that Federal grants under this subsection shall not exceed 55 per centum of the costs of implementing the program in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during the fiscal year.*

*(4) Any State that avails itself of the benefits of this subsection shall, not later than two years after issuance of a Federal grant under this subsection and annually thereafter, report to the Admin-*

*istrator on progress made in implementing a management program to improve the water quality of Narragansett Bay.*

*(e) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:*

*(1) $3,000,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987, to carry out subsection (a);*

*(2) $10,000,000 fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987, to carry out subsection (b); and*

*(3) $1,500,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987, to carry out subsection (d).*

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## TITLE II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

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## TITLE III—STANDARDS AND ENFORCEMENT

### EFFLUENT LIMITATIONS

SEC. 301. (a) Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.

(b) In order to carry out the objective of this Act there shall be achieved—

(1)(A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 304(b) of this Act, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 307 of this Act; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 203 of this Act prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 304(d)(1) of this Act; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedule of compliance, established pursuant to any State law or regulations (under authority preserved by section 510), or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this Act.

(2)(A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of this Act, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 315), that such elimination is technologically and economically achievable for category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(2) of this Act or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 307 of this Act;

(B)[1]

(C) **[**not later than July 1, 1984,**]** with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph**[**;**]** *as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), or three years after July 1, 1983, whichever is later, but in no case later than July 1, 1987;*

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 307 of this Act which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitation in accordance with subparagraph (A) of this paragraph not later than three years after the date such limitations are established;

(E) **[**not later than July 1, 1984,**]** *as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), or three years after July 1, 1983, whichever is later, but in no case later than July 1, 1987, compliance with* effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 304(a)(4) of this Act shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(4) of this Act; and

(F) for all pollutants (other than those subject to subparagraph (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph *as expeditiously as practicable but in no case* **[**not**]** later than 3 years after the date such limitations are established, or not later than [July 1, 1984,] *three years after July 1, 1983* whichever is later, but in no case later than July 1, 1987.

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[1] Subparagraph (B) was repealed by Public Law 97–117.

*(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially greater or based on fundamentally different control technology than under permits for such industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), or three years after July 1, 1983, whichever is later, but in no case later than July 1, 1987; and*

*(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 402(a)(1) in a permit issued after enactment of the Clean Water Act Amendments of 1983, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than July 1, 1987.*

* * * * * * *

(h) The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) such modified requirements will not interfere with the attainment of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

[(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;]

*(5) sources introducing waste into such treatment works are in compliance with all applicable pretreatment requirements and the applicant has assured continued compliance with such requirements and, in the case of any treatment works serving a population of five thousand or more, the applicant has adopted and is enforcing a program to control the entrance of toxic pollutants from industrial sources into such treatment works, comparable to that required by section 402(b)(8);*

(6) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of

toxic pollutants from nonindustrial sources into such treatment works;

(7) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the [permit.] *permit;*

*(8) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment. For the purposes of this paragraph, "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate.*

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act. *Such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works.* A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. *No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge.*

* * * * * * *

(j)(1) Any application filed under this section for a modification of the provisions of—

(A) subsection (b)(1)(B) under subsection (h) of this section shall be filed not later than the 365th day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, *except that a publicly owned treatment works which prior to December 31, 1982, had a contractural arrangement to discharge its sewage into another publicly owned treatment works which has applied for or received a modification under subsection (h) of this section, may* *apply for a modification of subsection (h) in its own right not later than thirty days after the enactment of the Clean Water Act Amendments of 1983;*

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WATER QUALITY RELATED EFFLUENT LIMITATIONS

Sec. 302. (a) Whenever, in the judgment of the Administrator, *or as identified under section 305(c)* discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 301(b)(2) of this Act, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of *public health,* public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

[(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic and social costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained (including the attainment of the objective of this Act) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

[(2) If a person affected by such limitation demonstrates at such hearing that (whether or not such technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act), such limitation shall not become effective and the Administrator shall adjust such limitation as it applies to such person.]

*(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within ninety days of such publication hold a public hearing.*

*(2)(A) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants, if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act) from achieving such limitation.*

*(B) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed five years, if the applicant demonstrates to the satis-*

*faction of the Administrator that such modified requirements (1) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (2) will result in reasonable further progress beyond the requirements of section 301(b)(2) toward the requirements of subsection (a) of this section.*

(c) The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 301 of this Act.

### WATER QUALITY STANDARDS AND IMPLEMENTATION PLANS

SEC. 303. (a) * * *

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(c)(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with the date of enactment of the Federal Water Pollution Control Act Amendments of 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

(2) *(A)* Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

*(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such critera shall be specific numerical criteria for such toxic pollutants and in addition may include criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Particular attention shall be given to toxic pollutants which are highly persistent in the environment, bioaccumulative, or known or suspected carcinogens, mutagens or teratogens. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods.*

*(C) In revising or adopting new water quality standards under this paragraph, a State (i) shall upgrade the designated use for a portion of the navigable waters to reflect the use actually being attained whenever the existing water quality standard specifies a use*

*that is less protective or beneficial than that which presently is being attained, and shall adopt new or additional criteria to protect such use; and (ii) shall not adopt uses that would require less stringent criteria than those in existing standards unless such State demonstrates that such existing standards are unattainable. For the purposes of this paragraph a new or existing use is attainable unless its achievement is precluded by natural background levels of pollutants or irretrievable man-induced conditions in the water body, or where achievement of the standards through controls more stringent than those required by section 301(b)(2) of this Act would result in substantial and widespread adverse social and economic impact. In no case shall a State adopt waste transport or equivalent functions as a designated use for any navigable waters.*

*(D) As part of its water quality standards program, each State shall implement a statewide antidegradation policy which shall, at a minimum, be consistent with the following:*

*(i) existing uses actually attained in a water body and the level of water quality necessary to support such existing uses shall be maintained and protected; and*

*(ii) the quality of waters whose existing quality exceeds those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate economic or social development essential to the area in which the waters are located, that there are no feasible and prudent alternatives to the water quality impact of such development, and that all practicable measures for point and non-point sources to reduce or offset such effects on water quality will be taken. In allowing such degradation the State shall provide for an adequate margin of safety in defining appropriate water quality criteria. In no event, however, may such degradation of water quality interfere with existing uses as required by clause (i). No degradation shall be allowed in high quality waters which constitute an outstanding National resource, such as waters of National and State parks, wilderness areas, wild or scenic rivers, wildlife refuges, and other waters of exceptional recreational or ecological significance.*

* * * * * * *

(d)(1) * * *

*(4) Not later than two years after the submittal of the identification required by section 305(c)(1) of this Act, each State shall establish effluent limitations for point sources discharging into each portion of the navigable waters identified under section 305(c)(1)(A) as necessary to attain applicable water quality standards, taking into account any substantial nonpoint source contributions of toxic pollutants and existing or planned controls on all sources. Such effluent limitations shall be incorporated into permits under section 402 of this Act, which shall provide for compliance as expeditiously*

*as practicable, but in no event later than three years after the establishment of such effluent limitation.*

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### INFORMATION AND GUIDELINES

SEC. 304. (a)(1) * * *

*(7) The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within nine months after the date of enactment of the Clean Water Act Amendments of 1983, guidance to the States on performing the identification required by section 305(c)(1) of this Act.*

*(8) The Administrator, after consultation with appropriate State agencies and within two years after the date of enactment of the Clean Water Act Amendments of 1983, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.*

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*(l) Not later than three years after the date of enactment of the Clean Water Act Amendments of 1983, the Administrator shall publish regulations providing guidelines for effluent limitations under subsection (b)(2) of this section and section 306 for categories of sources discharging significant amounts of toxic pollutants referred to in section 301(b)(2)(C), for which guidelines have not previously been published.*

### WATER QUALITY INVENTORY

SEC. 305. (a) * * *

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*(c) Each State shall prepare and submit to the Administrator and the Congress within two years after the enactment of the Clean Water Act Amendments of 1983, and revise biennially thereafter, an identification of—*

*(1) those waters within or adjacent to such State which after the application of effluent limitations required under section 301(b)(2) of this Act cannot reasonably be anticipated to attain or maintain (A) water quality standards for such waters reviewed, revised or adopted in accordance with section 303(c)(2)(B) of this Act, due to toxic pollutants, or (B) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water; and*

*(2) those waters within or adjacent to such State which are public water supplies or otherwise important to public health protection, or which have a high quality use designation, and*

*which because of such use and current or potential pollution are of high priority to such State.*

*In the case of any State which fails to submit the identification required by paragraph (1), or which submits an incomplete identification, the Administrator shall promptly prepare an identification in accordance with paragraph (1).*

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FEDERAL ENFORCEMENT

SEC. 309. (a) * * *

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[(c)(1) Any person who willfully or negligently violates section 301, 302, 306, 307, or 308 of this Act, or any permit condition or limitation implementing any of such actions in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by a State shall be published by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or both.

[(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

[(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.]

*(c)(1) Any person who (A) negligently violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage, or causes such treatment works to violate any affluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both.*

*(2) Any person who (A) knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under*

*section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage, or causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than one year, or by both.*

*(3) Any person who knowingly makes any false material statement, representation, or certification in any application, record, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccuate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.*

*(4) If a conviction is for a violation of paragraph (1), (2), or (3) of this subsection committed after a first conviction of such person under the same paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.*

*(5) For the purpose of paragraphs (1), (2), and (3), the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.*

*(6) For the purpose of paragraphs (1) and (2), the term "hazardous substance" shall mean (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.*

(d) Any person who violates section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator, or by a State, or in a permit issued under section 404 of this Act by a State and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty, not to exceed **[**$10,000**]** *$25,000* per day of such violation.

* * * * * * *

*(g)(1) In addition to any other relief provided, whenever on the basis of any information available to him the Administrator finds*

*that any person is in violation of section 301, 302, 303, 306, 307, 308, 318, or 504 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by him or by a State, or in a permit issued under section 404 of this Act by a State, he may after notifying the State in which the violation occurs assess a civil penalty of not more than $10,000 per day of violation, not to exceed $75,000 in total.*

*(2) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation. Such hearing shall not be subject to the requirements of section 554 or 556 of title 5, United States Code.*

*(3) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.*

*(4) Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Administrator, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty de novo.*

*(5) The Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.*

*(6) Action taken by the Administrator pursuant to this subsection shall not affect or limit the Administrator's authority to enforce any provision of this Act: Provided, however, That the discharge of pollutants which is penalized administratively under this subsection shall not be the subject of a civil penalty under section 309(d)*

*or section 311(b) of this Act in a civil action commenced by the Administrator.*

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### CLEAN LAKES

Sec. 314. (a) * * *

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(c)(1) The amount granted to any State for any fiscal year under this section shall not exceed 70 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under this section.

(2) There is authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1973; $100,000,000 for the fiscal year 1974; $150,000,000 for the fiscal year 1975, $50,000,000 for fiscal year 1977, $60,000,000 for fiscal year 1978, $60,000,000 for fiscal year 1979, $60,000,000 for fiscal year 1980, $30,000,000 for fiscal year 1981, [and] $30,000,000 for fiscal year 1982 and, *$30,000,000 per fiscal year for fiscal years 1984, 1985, 1986, and 1987* for grants to States under this section which such sums shall remain available until expended. The Administrtor shall provide for an equitable distribution of such sums to the States with approved methods and procedures under this section.

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### *NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM*

*Sec. 319. There are authorized to be appropriated for the purposes of implementing management programs for the control of nonpoint sources of pollution, to remain available until expended, $150,000,000 per fiscal year for fiscal years 1984, 1985, 1986, and 1987.*

## TITLE IV—PERMITS AND LICENSES

### CERTIFICATION

Sec. 401. * * *

### NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Sec. 402. (a) * * *

(b) At any time after the promulgation of the guidelines required by subsection (h)(2) of section 304 of this Act, the Governor of each State desiring to administer its own permit program *or part of a permit program in accordance with paragraph (10) of this subsection,* for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 301, 302, 306, 307, and 403;

[(B) are for fixed terms not exceeding five years; and]

*(B) are for fixed terms not exceeding ten years, unless a permit inlcudes a waiver or modification of any otherwise applicable requirement under sections 301(c), (g), (h), or (m) of this Act, in which case such permit shall be for a fixed term not exceeding five years;*

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

*(D) shall be promptly modified whenever new or revised requirements under sections 301, 302, 303, 304, 307, 403, or 405 are established which are more stringent than any requirement in the permit or which control pollutants not limited in the permit and such modification implements these new or revised requirements;*

[(D)] *(E)* control the disposal of pollutants into wells;

*(F) shall be reconsidered for termination or modification at any time a State other than that in which the source is located provides notice that the permitted discharge is adversely affecting the waters of such State and seeks a modification of such permit;*

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 308 of this Act, or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 308 in this Act;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which

the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatments works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 307(b) of this Act into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 306 if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 301 if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 204(b), 307, and 308.

*(10) In the event a Governor submits a plan to administer part of a permit program, the Administrator may approve such submission upon a showing that—*

*(A)(i) the plan provides for administration of permit program components which represent a significant and identifiable part of the State program authorized by this section; and*

*(ii) the plan provides for and the State agrees to make all reasonable efforts to assume administration of the remainder of the program by a specified future date not to exceed five years from submission of the State's initial plan; or*

*(B)(i) the plan provides for administration of a permit program for one or more discharge categories such as Federal facilities, municipal or industrial categories, or any other category of discharges which represent a significant and identifiable part of the permit program in the State; and*

*(ii) the plan covers all categories of discharges under the jurisdiction of the State agency or department responsible for administering the plan and represents a complete permit program for all categories of discharges contained in the plan. For purposes of the preceding sentence, "a complete permit program," means one for which adequate authority exists to carry out each of the activities listed in paragraphs (1) through (9) of this subsection.*

(c)(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section [as to those navigable waters] *as to those activities and discharges* subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 304(i)(2) of this Act. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 304(h)(2) of this Act.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

*(4) In the event a determination is made (A) by a State to return administration of the program to the Administrator or (B) by the Administrator to withdraw approval pursuant to paragraph (3) of this subsection, return of administration or withdrawal of approval may only be made of the entire program currently being administered by the State.*

(d)(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2)*(A)* No permit shall issue **[**(A)**]** *(i)* if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or **[**(B)**]** *(ii)* if the Administrator within ninety days of the date of the transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this Act. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator.

*(B) In the case of the failure of any State to accept the recommendations of another State whose waters may be affected by the issuance of a permit, submitted in accordance with subsection (b)(5), the Administrator shall determine whether any violation of a water quality standard of the affected State, adverse effect on public health, or other demonstrated harm to the interests of the affected State will result from the issuance of such permit. If the Administrator so determines, the Administrator shall object to the issuance of such permit. Any such determination shall be provided in writing to the affected State and such determination or such objection shall be reviewable in the appropriate Circuit Court of Appeals under sec-*

*tion 509(b) of this Act as the issuance or denial of a permit under section 402.*

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(l)*(1)* The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

*(2) The Administrator shall not require a permit under this section nor impose effluent limitations, nor shall the Administrator directly or indirectly require any State to require such a permit or impose such limitations, for discharges of stormwater runoff from mining operations or oil or gas exploration, production, processing, or treatment operations, composed entirely of flows from conveyances or systems of conveyances (including pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and not contaminated with process wastes, overburden, raw materials, toxic pollutants, hazardous substances in excess of reportable quantities, or oil or grease.*

*(m) In issuing a permit under this section, the Administrator shall not require pretreatment by dischargers of conventional pollutants identified pursuant to section 304(b)(4) of this Act as a substitute for municipal treatment adequate to meet the requirements of a permit issued under this section for a treatment works (as defined in section 212 of this Act) which is publicly owned if such discharger is in compliance with all applicable requirements of local pretreatment programs approved under subsection (b)(8) of this section. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.*

*(n) Except as provided in this subsection, when a permit is renewed or reissued under this section, it shall not contain effluent limitations, standards, or conditions which are less stringent than the comparable final effluent limitations, standards, or conditions in the previous permit. If the source has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal or reissuance).*

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### DISPOSAL OF SEWAGE SLUDGE

SEC. 405. (a) * * *

(d)*(1)* The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this subsection and from time to time thereafter, regulations providing guidelines for the disposal of sludge and the utilization of sludge for various purposes. Such regulations shall—

**[**(1)**]** *(A)* identify uses for sludge, including disposal;

**[**(2)**]** *(B)* specify factors to be taken into account in determining the measures and practices applicable to each such use or disposal (including publication of information on costs);

**[**(3)**]** *(C)* identify concentration of pollutants which interfere with each such use or disposal.

The Administrator is authorized to revise any regulation issued under this subsection.

*(2)(A)(i) Not later than six months after the enactment of the Clean Water Act Amendments of 1983, the Administrator shall identify those toxic pollutants which on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment.*

*(ii) Not later than eighteen months after enactment of the Clean Water Act Amendments of 1983, the Administrator shall identify those toxic pollutants not identified under subparagraph (A)(i) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment.*

*(B)(i) Not later than eighteen months after the enactment of the Clean Water Act Amendments of 1983, the Administrator shall publish regulations specifying acceptable management practices for sewage sludge containing each toxic pollutant identified under subparagraph (A)(i) and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A). Such management practices and numerical limitations shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. Such regulations shall require compliance no later than six months after their publication.*

*(ii) Not later than thirty months after the enactment of the Clean Water Act Amendments of 1983, the Administrator shall publish regulations specifying acceptable management practices for sewage sludge containing each toxic pollutant identified under subparagraph (A)(ii) and establishing numerical limitations for each such pollutant for each such use identified under paragraph (1)(A). Such management practices and numerical limitations shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. Such regulations shall require compliance no later than six months after their publication.*

*(iii) For purposes of this subparagraph, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under paragraph (2)(A), he may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in his judgment is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.*

*(C) Nothing in this section authorizes the establishment of any requirement or time for compliance which is less stringent than required by any other law.*

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## TITLE V—GENERAL PROVISIONS

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### CITIZEN SUITS

SEC. 505. (a) * * *

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(d) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any *prevailing or substantially prevailing* party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e)*(1)* Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

*(2) Nothing in this Act shall be construed, interpreted, or applied to displace, preempt, or limit the rights or liabilities of any person under State common law.*

*(3) Nothing in this Act shall affect or modify in any way the liabilities of any person under other Federal statutes for damages caused by noncompliance with any requirement of this Act or any permit issued under this Act.*

*(4) Any person injured by an act or activity within the field covered by this Act may file an action and be granted relief which is provided under the statutory or common law of the State in which such person resides or in which the claim arose to the extent provided under such State law. A State or municipality may file an action in, or seek and receive removal to, a Federal district court in such State or the State in which the claim arose, in any case involving the application of State common or statutory law to an instance where a discharge of pollutants or other pollution arising in another State is alleged to have an adverse effect on the public health or welfare or the attainment of any water quality requirement of such State or municipality.*

* * * * * * *

### ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 509. (a) * * *

(b)(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 306, (B) in making any determination pursuant to section 306(b)(1)(C), (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 307, (D) in making any determination as to a State permit program submitted under section 402(b), (E) in approving or promulgating any effluent limitation or other limitation under section 301, 302, or 306, and (F) in issuing or denying any permit under section 402, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or [transacts such business] *transacts business which is directly affected by such action* upon application by such person. Any such application shall be made within [ninety] *one hundred and twenty* days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such [ninetieth] *one hundred and twentieth* day.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

*(3)(A) If applications for review of the same agency action have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States and the Administrator has received written notice of the filing of one or more applications within thirty days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing the Administrative Office of the United States Courts that applications have been filed in two or more Circuit Courts of Appeals of the United States, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, the Administrative Office thereupon shall, within three business days of receiving such written notice from the Administrator, select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the Circuit Court of Appeals of the United States which remanded such action.*

*(B) Where applications have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States with respect to the same agency action and the record has been filed in one of such courts pursuant to paragraph (3)(A), the other courts in which such applications have been filed shall promptly transfer such applications to the Circuit Court of Appeals of the United States in which the record has been filed. Pending selection of a court pursuant to paragraph (3)(A), any court in which an application has been filed under paragraph (1) of this subsection may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.*

*(C) Any court in which an application with respect to any agency action has been filed under paragraph (1) of this subsection, including any court selected pursuant to paragraph (3)(A), may transfer*

*such application to any other Circuit Court of Appeals of the United States for the convenience of the parties or otherwise in the interest of justice.*

*(4) In any judicial proceeding under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever it determines that such award is appropriate.*

* * * * * * *

### OTHER AFFECTED AUTHORITY

SEC. 511. (a) * * *

* * * * * * *

*(e) Any State or municipality the water quality of which is adversely affected by pollutants or contaminants from another State may petition the Administrator who, upon determining on the record after opportunity for Agency hearing pursuant to 5 U.S.C. 554, 556, and 557 that such pollution or contamination endangers the public health or welfare, or causes or contributes to a violation of water quality standards or other demonstrable harm, shall issue an order restraining any person causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of this Act and other equitable considerations. In cases where the pollution complained of is discharged pursuant to permit, the petitioner must previously have exhausted relief available under section 402.*

* * * * * * *

### *REPORTS TO CONGRESS*

SEC. *516. (a)* * * *

* * * * * * *

*(f) The Administrator shall, not later than two years after the date of the enactment of the Clean Water Act Amendments of 1983, submit a report to the Congress concerning hazardous wastes identified or listed under section 3001 of the Solid Waste Disposal Act which are excluded from regulation pursuant to subtitle C of the Solid Waste Disposal Act under regulations exempting mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works for treatment. Such report shall specify the types and quantities of such hazardous wastes which are exempted pursuant to such regulations and shall include recommendations respecting whether or not other provisions of law applicable to such mixtures are adequate to protect human health and the environment from hazards associated with such wastes or whether regulation of such mixtures under subtitle C of the Solid Waste Disposal Act is necessary for such purpose.*

### GENERAL AUTHORIZATION

SEC. 517. There are authorized to be appropriated to carry out this Act, other than sections 104, 105, 106(a), 107, 108, 112, 113, 114, 115, 206, 207, 208 (f) and (h), 209, 304, 311 (c), (d) (i), (l), and (k) 314, 315, and 317, $250,000,000 for the fiscal year ending June 30, 1973, $300,000,000 for the fiscal year ending June 30, 1974, $350,000,000 for the fiscal year ending June 30, 1975, $100,000,000 for the fiscal year ending September 30, 1977, $150,000,000 for the fiscal year ending September 30, 1978, $150,000,000 for the fiscal year ending September 30, 1979, $150,000,000 for the fiscal year ending September 30, 1980, $150,000,000 for the fiscal year ending September 30, 1981, **[**and**]** $160,000,000 for the fiscal year ending September 30, 1982**[**.**]** *and $160,000,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987.*

* * * * * * *

NOTE.—The following provisions of S. 431 do not amend the Clean Water Act.

*(b) No State shall be required to modify a permit program approved or submitted under section 402 of the Clean Water Act as a result of the amendment made by subsection (a) of this section before July 1, 1986.*

* * * * * * *

*SEC. 19. For the purposes of complying with section 204(b)(1) of the Clean Water Act, the ad valorem tax user charge system of the Town of Hampton, New Hampshire, shall be deemed to have been dedicated as of December 27, 1977. The Administrator of the Environmental Protection Agency shall review such ad valorem tax user charge system for compliance with the remaining requirements of section 204(b)(1) and related regulations of the Agency.*

○

**Calendar No. 394**

98TH CONGRESS
1ST SESSION

# S. 431

**[Report No. 98–233]**

To amend the Clean Water Act, as amended, to authorize funds for fiscal years 1983, 1984, 1985, 1986, and 1987, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 25), 1983

Mr. CHAFEE (for himself and Mr. RANDOLPH) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

SEPTEMBER 21 (legislative day, SEPTEMBER 19), 1983

Reported by Mr. CHAFEE, with an amendment and an amendment to the title

[Strike out all after enacting clause and insert the part printed in italic]

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# A BILL

To amend the Clean Water Act, as amended, to authorize funds for fiscal years 1983, 1984, 1985, 1986, and 1987, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

~~SHORT TITLE~~

~~SECTION 1. This Act may be cited as the "Clean Water Act Amendments of 1983".~~

## ~~AUTHORIZATION~~

~~SEC. 2. (a) Section 104(u)(1) of the Clean Water Act is amended by inserting immediately following "1982" the phrase ", and not to exceed $22,770,000 per fiscal year for the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987".~~

~~(b) Section 104(u)(2) of the Clean Water Act is amended by inserting immediately following "1982" the phrase ", and not to exceed $3,000,000 per fiscal year for the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987".~~

~~(c) Section 104(u)(3) of the Clean Water Act is amended by striking "and" after "1981," and by inserting immediately following "1982" the phrase ", and not to exceed $1,500,000 per fiscal year for the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987".~~

~~(d) Section 106(a)(2) of the Clean Water Act is amended by striking "and" after "1981" and inserting in lieu thereof a comma and by inserting ", 1983, 1984, 1985, 1986, and 1987" immediately following "1982".~~

~~(e) Section 112(c) of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $7,000,000 per fiscal~~

~~year for the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987".~~

~~(f) Section 314(c)(2) of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $30,000,000 per fiscal year for fiscal years 1983, 1984, 1985, 1986, and 1987".~~

~~(g) Section 517 of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $160,000,000 per fiscal year for the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987".~~

### ~~CHESAPEAKE AND NARRAGANSETT BAYS~~

~~SEC. 3. Title I of the Clean Water Act is amended by adding at the end thereof the following new section:~~

### ~~"CHESAPEAKE AND NARRAGANSETT BAYS~~

~~"SEC. 117. (a) The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay program, make a grant for the purpose of implementing the management mechanisms contained in such plan if such State has, within one year after the date of enactment of the Clean Water Act Amendments of 1983, approved and committed to implement all or substantially all aspects of such plan.~~

~~"(b) Federal grants under subsection (a) of this section shall not exceed 55 per centum of the costs of implementing the interstate management plan in any year and shall not be made to any State for any fiscal year when the expenditure of non-Federal funds by such State is less than 45 per centum of the costs of implementing the interstate management plan during such fiscal year.~~

~~"(c) The Administrator shall continue the Chesapeake Bay program to:~~

~~"(1) continue to assess the relationship between point and nonpoint source pollution and the impact of such pollution on water quality; and~~

~~"(2) do further research on the impact of pollutant loadings, particularly nutrients, on the fisheries resources of the bay. Special attention shall be given to the striped bass.~~

~~"(d) The Administrator shall immediately begin to assess the principal factors having an adverse effect on the environmental quality of the Narragansett Bay, as perceived by both scientists and users, and to direct and coordinate, subsequent to a review of presently ongoing research, research and abatement programs that will most efficiently address those factors. The Administrator shall also: analyze all environmental sampling data presently being collected on the Narragansett Bay and suggest and undertake methods for~~

~~improving such data collection; establish a continuing capacity for collecting, storing, analyzing, and disseminating such data; institute a sampling program where deficiencies are found to exist in present sampling programs; determine what units of government have management responsibility for the environmental quality of the bay and define how much management responsibility can best be structured so that communication and coordination can be improved not only as between the respective units of government but also between those units and research and educational institutions, and concerned groups and individuals on the bay.~~

~~“(c) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:~~

~~“(1) $10,000,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987 for grants to States under subsection (a);~~

~~“(2) $3,000,000 per fiscal year for the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987 to carry out subsection (c); and~~

~~“(3) $1,500,000 per fiscal year for the fiscal years ending September 30, 1983, September 30, 1984, Sep-~~

~~tember 30, 1985, September 30, 1986, and September 30, 1987 to carry out subsection (d).".~~

~~COMPLIANCE DATES~~

~~SEC. 4. (a) Section 301(b)(2)(C) of the Clean Water Act is amended by striking "not later than July 1, 1984," and inserting immediately after "of this paragraph" the following: "not later than three years after the date such limitations are established, or not later than three years after January 1, 1983, whichever is later, but in no case later than July 1, 1987".~~

~~(b) Section 301(b)(2)(E) of the Clean Water Act is amended by striking "July 1, 1984" and inserting in lieu thereof "July 1, 1987".~~

~~(c) Section 301(b)(2)(F) of the Clean Water Act is amended by striking "July 1, 1984" and inserting in lieu thereof "three years after January 1, 1983".~~

~~OCEAN WAIVER~~

~~SEC. 5. (a) Section 301(h)(5) is amended by inserting "the applicant is in compliance with" immediately before "all applicable" and by striking "will be enforced".~~

~~(b) Section 301(h)(7) is amended by striking the period immediately after "the permit" and inserting in lieu thereof a semicolon.~~

~~(c) Section 301(h) is amended by adding immediately after paragraph (7) the following new paragraph:~~

~~"(8) the applicant is currently discharging effluent which has received primary physical and other treatment to control pathogens.".~~

~~WATER QUALITY STANDARDS~~

~~SEC. 6. (a) Section 303(c)(2) of the Clean Water Act is amended by inserting "maintain as a minimum use the designated use existing on January 1, 1983," immediately following "to protect the public health or welfare,".~~

~~(b) Section 303(c)(4) of the Clean Water Act is amended by inserting at the end thereof "Any revised or new standard proposed or promulgated under this paragraph shall be such as to protect the public health or welfare, maintain as a minimum use the designated use existing on January 1, 1983, enhance the quality of water and serve the purpose of this Act.".~~

~~PRETREATMENT~~

~~SEC. 7. (a) Section 304(g) of the Clean Water Act is amended by inserting at the end thereof the following new paragraph:~~

~~"(3) For the purpose of carrying out section 307(c) of this Act, the Administrator shall publish, within sixty days after the date of enactment of the Clean Water Act Amendments of 1983—~~

~~"(A) a listing of all pollutants covered by categorical pretreatment standards issued, or expected to be issued, under this Act;~~

~~"(B) guidelines on the nature, extent, and frequency of monitoring necessary to comply with section 307(e)(3)(D) of this Act; and~~

~~"(C) a determination, for each pollutant listed under this paragraph, whether applicants shall be required to develop and submit numerical limits under section 307(e)(3)(A) of this Act as substitutes for categorical pretreatment standards. The Administrator shall require numerical limits whenever the amount and concentration of a pollutant introduced by sources into publicly owned treatment works interferes with, passes through or otherwise is incompatible with such works.".~~

~~(b) Section 307 of the Clean Water Act is amended by inserting at the end thereof the following new subsection:~~

~~"(e)(1) Notwithstanding subsection (d) of this section, the Administrator, or a State with a program approved under section 402(b) of this Act, may, after notice and opportunity for public hearing, modify any permit issued under section 402 for a publicly owned treatment works to establish and implement an alternative local pretreatment system in accordance with this subsection.~~

~~"(2) PREAPPLICATION.—~~

~~"(A) within one hundred and twenty days after the date of enactment of the Clean Water Act Amendments of 1983, the owner or operator of any treatment works intending to apply for a permit modification under this subsection shall file with the Administrator a letter of intent and supporting documentation demonstrating that:~~

~~"(i) such works is in compliance with all requirements of section 402(b)(8) of this Act;~~

~~"(ii) such works is in compliance with applicable effluent limitations under section 301(b)(1)(B) and (b)(1)(C); and~~

~~"(iii) the owner or operator has or will have sufficient funds, equipment, and personnel to comply with and, together with all other necessary agencies or persons, will comply with a specific schedule of actions to satisfy the conditions prescribed in paragraph (3) of this subsection as expeditiously as possible but in no case later than two years from the date of such letter.~~

~~"(B) The Administrator, or a State with a program approved under Section 402(b) of this Act, may, upon review of a letter of intent submitted by the owner or operator of any treatment works in accord-~~

~~ance with subparagraph (A), determine to stay for the period of an approved schedule of actions not to exceed two years from the date of such letter the applicability of categorical pretreatment standards for sources introducing pollutants into such treatment works.~~

~~"(C) For purposes of sections 309 and 505 of this Act, each requirement contained in an approved schedule of actions shall be considered a limitation.~~

~~"(3) APPLICATION.—Following submission of a letter of intent under paragraph (2)(A), the owner or operator of a treatment works may apply, in accordance with an approved schedule of actions, for a permit modification to establish and implement an alternative local pretreatment system. The application shall specify the pollutants for which a modification is requested and shall demonstrate to the satisfaction of the Administrator, or a State with a program approved under section 402(b) of this Act, that:~~

~~"(A) The applicant has in place an enforceable system of local pretreatment requirements comprehensive enough to effectively control the introduction into such works of pollutants that may interfere with, pass through, or otherwise be incompatible with such works. If the Administrator determines pursuant to section 304(g)(3)(C) that numerical limits shall be required for any pollutant introduced into such works, such local~~

~~requirements shall consist of numerical limits on the amounts and concentrations of such pollutants.~~

~~“(B) The words is in compliance with existing or proposed numerical effluent limitations applicable to each pollutant for which the application is submitted, and that such limitations prevent the discharge of those pollutants in amounts or concentrations that would interfere with the attainment or maintenance of designated uses for the receiving water body. Designated uses existing on January 1, 1983, shall at a minimum be maintained. Numerical effluent limitations may be derived from existing water quality standards or may be developed specifically for the purposes of the application.~~

~~“(C) The owner or operator has, and will maintain, adequate legal authority and technical and administrative capability to monitor and enforce compliance with all requirements of the modified permit.~~

~~“(D) The owner or operator has designed and will carry out an adequate sampling and monitoring program to insure continued compliance with all requirements of the modified permit, including periodic monitoring and at least annual reporting to the Administrator or the State regarding compliance with the require-~~

~~ments and limitations specified in subparagraphs (A) and (B) of this paragraph.~~

~~"(E) The ability of the owner or operator to safely use or dispose of sludge resulting from operation of the works will not be impaired during the life of the permit, as modified.~~

~~"(4) APPROVAL OF APPLICATION.—Not later than the sixtieth day after the date of the receipt of an application under this subsection, the Administrator or, if appropriate, the State shall determine whether such application is granted. If an application under this subsection is granted, the permit shall be modified to incorporate each requirement, limitation, program and condition specified in (or pursuant to) subparagraphs (3)(A) through (3)(e) of this subsection, and each modification shall be subject to the provisions of section 309(f) and 505(a)(1)(A) of this Act.~~

~~"(5) DENIAL OF APPLICATION.—If an application under this subsection is denied, the Administrator or, if appropriate, the State, shall notify the applicant, who in turn shall promptly notify each affected source. Each such source shall immediately thereafter be subject to applicable categorical standards, and shall achieve compliance in the shortest possible time but in no case later than the time specified pursuant to subsection (b)(1) of this section.~~

~~"(6) SUPPLEMENTAL APPLICATIONS.—If the Administrator issues categorical pretreatment standards after a permit has been modified under this subsection and such standards regulate any pollutant not covered by such modification, the owner or operator may submit a supplemental letter of intent and application specifically addressing those additional pollutants. A supplemental letter of intent shall be filed not later than ninety days following the effective date of such standards, and a supplemental application shall be made not later that two hundred seventy days thereafter. The Administrator or, if appropriate, the State shall consider any supplemental letters of intent and applications in accordance with paragraphs (1) through (5) of this subsection.".~~

~~(c) Section 309(f) of the Clean Water Act is amended by inserting "or (e)" immediately after "in violation of subsection (d)".~~

~~(d) Section 402 of the Clean Water Act is amended by adding at the end thereof the following new subsection:~~

~~"(m) In any case where a discharger of conventional pollutants identified pursuant to section 304(b)(4) of this Act is in compliance with all applicable requirements of local pretreatment programs approved under subsection (b)(8) of this section as a substitute for municipal treatment adequate to meet the requirements of a permit issued under this section by a treatment works (as defined in section 212 of this Act)~~

~~which is publicly owned, the Administrator shall not require, as a condition of a permit under this section, pretreatment of such conventional pollutants by such dischargers. Nothing in this subsection shall be construed to limit or otherwise affect the authority of the Administrator under section 307 and 309 of this Act or of State and local authorities under sections 307(b)(4) and 510 of this Act, to relieve such treatment works of the responsibility to meet requirements established under this Act, or to preclude such works from pursuing whatever other options are available to comply with permits issued under this section.".~~

~~(c) Section 505(f) of the Clean Water Act is amended by striking out "or pretreatment standards" and inserting in lieu thereof "pretreatment standards or alternative local pretreatment system".~~

### ~~CIVIL PENALITY~~

~~SEC. 8. Section 309(d) of the Clean Water Act is amended by striking "$10,000" and inserting in lieu thereof "$25,000".~~

### ~~PARTIAL NPDES PROGRAM APPROVAL~~

~~SEC. 9. (a) Section 402(b) of the Clean Water Act is amended by inserting the following after the first full sentence: "In the event the Governor submits a plan to administer part of a permit program, the Administrator may approve such submission upon a showing that—~~

~~“(1) the plan provides for administration of: (A) one or more major components of a permit program, or (B) one or more discharge categories such as Federal facilities, municipal or industrial categories, or any other category of discharges which represents a major part of the permit program in the State; and~~

~~“(2)(A) in the case of a plan providing for administration of one or more components of a permit program, the plan provides for and the State agrees to make all reasonable efforts to obtain full Administration of the permit program by a specified future date not to exceed five years from submission of the State's initial plan; or (B) in the case of a plan providing for administration of one or more discharge categories, the plan covers all categories of discharges under the jurisdiction of the State agency or department responsible for administering the plan and represents a complete permit program for all categories of discharges contained in the plan. A complete permit program means one for which adequate authority exists to carry out each of the activities listed in paragraphs (1) through (9) below.”.~~

~~(b) Section 402(c) of the Clean Water Act is amended by striking “as to those navigable waters” and inserting in lieu thereof “as to those activities and discharges”.~~

### ~~AWARD OF FEES~~

~~SEC. 10. Section 509(b) of the Clean Water Act is amended by adding at the end thereof the following new paragraph:~~

~~"(3) In any judicial proceeding under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to a prevailing or substantially prevailing party whenever it determines that such award is appropriate.".~~

### ~~REPORTS TO CONGRESS~~

~~SEC. 11. Section 516 of the Clean Water Act is amended by adding at the end thereof the following new subsections:~~

~~"(f) The Administrator shall, not later than two years after the date of the enactment of the Clean Water Act Amendments of 1983 and not later than five years after the date of promulgation of pretreatment standards under section 307(b)(1) of this Act, submit reports to the Congress concerning hazardous wastes identified or listed under section 3001 of the Solid Waste Disposal Act which are excluded from regulation pursuant to subtitle C of the Solid Waste Disposal Act under regulations exempting mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works for treatment. Such report shall specify the types and quantities of such hazard-~~

~~ous wastes which are exempted pursuant to such regulations and shall include recommendations respecting whether or not other provisions of law applicable to such mixtures are adequate to protect human health and the environment from the hazards associated with such wastes or whether regulation of such mixtures under subtitle C of the Solid Waste Disposal Act is necessary for such purpose.~~

~~"(g) The Administrator shall, in consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, conduct a study of the effects and methods of control of pollution from nonpoint sources and report the results of such study to the Congress not later than one year after the date of the enactment of the Clean Water Act Amendments of 1983.".~~

*SHORT TITLE*

*SECTION 1. This Act may be cited as the "Clean Water Act Amendments of 1983".*

*AUTHORIZATION*

*SEC. 2. (a) Section 104(u)(1) of the Clean Water Act is amended by inserting immediately following "1982" the phrase ", and not to exceed $22,770,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987".*

*(b) Section 104(u)(2) of the Clean Water Act is amended by inserting immediately following "1982" the phrase*

*", and not to exceed $3,000,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987".*

*(c) Section 104(u)(3) of the Clean Water Act is amended by striking "and" after "1981," and by inserting immediately following "1982" the phrase ", and not to exceed $1,500,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987".*

*(d) Section 106(a)(2) of the Clean Water Act is amended by striking "and" after "1981" and inserting in lieu thereof a comma and by inserting ", 1984, 1985, 1986, and 1987" immediately following "1982".*

*(e) Section 112(c) of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $7,000,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987".*

*(f) Section 314(c)(2) of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately following "1982" the phrase ", and $30,000,000 per fiscal year for fiscal years 1984, 1985, 1986, and 1987".*

*(g) Section 517 of the Clean Water Act is amended by striking "and" after "1981," and inserting immediately fol-*

*lowing "1982" the phrase ", and $160,000,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987".*

### *CHESAPEAKE AND NARRAGANSETT BAYS*

*SEC. 3. Title I of the Clean Water Act is amended by adding at the end thereof the following new section:*

### *"CHESAPEAKE AND NARRAGANSETT BAYS*

*"SEC. 117. (a) The Administrator shall continue the Chesapeake Bay program and shall establish and maintain in the Environmental Protection Agency an Office, Division, or Branch of Chesapeake Bay Programs to—*

*"(1) collect and make available, through publications and other appropriate means, the results of and other information pertaining to research and other activities that address the environmental quality of the Chesapeake Bay (herein after 'the Bay');*

*"(2) coordinate all Federal research projects pertaining to the Bay;*

*"(3) conduct research to determine the impact of sediment deposition in the Bay and to identify the sources, rates, routes, and distribution patterns of such sediment deposition; and*

*"(4) conduct research on the impact of natural and man-induced environmental changes on the living*

*resources of the Bay and the relationships between such changes. Particular emphasis shall be placed on researching the impact of pollutant loadings of nutrients, chlorine, acid precipitation, dissolved oxygen, and toxic pollutants, including organic chemicals and heavy metals. Special attention shall be given to the impact of such changes on the striped bass.*

*"(b)(1) The Administrator shall, at the request of the Governor of a State affected by the interstate management plan developed pursuant to the Chesapeake Bay program (hereinafter 'the plan'), make a grant for the purpose of implementing the management mechanisms contained in the plan if such State has, within one year after the date of enactment of the Clean Water Act Amendments of 1983, approved and committed to implement all or substantially all aspects of the plan. Payments for such purpose may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.*

*"(2) A State or combination of States may elect to avail itself of the benefits of this subsection by submitting to the Administrator a comprehensive proposal to implement management mechanisms contained in the plan which shall include (A) a description of proposed abatement actions which the State commits to take within a specified time period to reduce pollution in the Bay and to meet applicable water*

*quality standards, and (B) the estimated cost of the abatement actions proposed to be taken during the next fiscal year. If the Administrator finds that such proposal is consistent with the national policies set forth in section 101(a) of this Act and will contribute to the achievement of the national goals set forth in section 101(a) of this Act he shall approve such proposal and shall finance the costs of implementing segments of such proposal; except that Federal grants under this subsection shall not exceed 55 per centum of the costs of implementing the plan in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.*

*"(3) Administrative costs in the form of salaries, overhead or indirect costs for services provided and charged against programs or projects supported by funds made available under this subsection shall not exceed in any one fiscal year 10 per centum of the annual Federal grant made to a State under this subsection.*

*"(c) Any State or combination of States that receives a grant under subsection (b) shall, within 18 months after the date of receipt of a Federal grant under subsection (b) and biennially thereafter, report in conjunction with EPA to the Congress on progress made in implementing the interstate management plan developed pursuant to the Chesapeake Bay program.*

*"(d)(1) The Administrator shall, at the request of the Governor of an affected State, after consultation with appropriate Federal and State agencies and other interested persons, make a grant for purposes of assessing the principal factors having an adverse effect on the environmental quality of the Narragansett Bay, as perceived by both scientists and users, in conjunction with developing and implementing a management program to improve such Bay's water quality. Payments for such purposes may be made to the States as hereinafter provided, subject to such terms and conditions as the Administrator considers appropriate.*

*"(2) A State may elect to avail itself of the benefits of this subsection by submitting to the Administrator a full and complete description of the program it proposes to establish and administer under State law. The Administrator shall approve each such submitted program, within 3 months of receipt of such program, if the applicant demonstrates to the satisfaction of the Administrator that the applicant will—*

*"(A) establish a committee of representatives from various units of Federal, State, and local governments, research and educational institutions, and concerned groups and individuals on the Narragansett Bay, to provide advice on the design and implementation of a management program and to coordinate communication*

*on issues affecting the Narragansett Bay's water quality;*

*"(B) coordinate, subsequent to a review of presently ongoing research, research and abatement programs that will most efficiently address those principal factors having an adverse effect on the Narragansett Bay's water quality; and*

*"(C) undertake, subsequent to an analysis of all environmental sampling data being collected on the Narragansett Bay, methods for improving such data collection, particularly with respect to toxic pollutants; establish a continuing capacity for collecting, storing, analyzing and disseminating such data; institute a sampling program where deficiencies are found to exist in present sampling programs; and develop and, as soon as practicable but within three years after enactment of the Clean Water Act Amendments of 1983, implement management practices and measures (including land use requirements) to reduce to the greatest extent feasible pollutant loadings in such Bay and to improve such Bay's water quality.*

*"(3) If the Administrator approves a program submitted under paragraph (2) of this subsection, he shall finance the costs of implementing segments of such program, except that Federal grants under this subsection shall not exceed 55 per*

*centum of the costs of implementing the program in any fiscal year and shall be made on condition that non-Federal sources provide the remainder of the cost of implementing the plan during such fiscal year.*

*"(4) Any State that avails itself of the benefits of this subsection shall, not later than two years after issuance of a Federal grant under this subsection and annually thereafter, report to the Administrator on progress made in implementing a management program to improve the water quality of Narragansett Bay.*

*"(e) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section:*

*"(1) $3,000,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987, to carry out subsection (a);*

*"(2) $10,000,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987, to carry out subsection (b); and*

*"(3) $1,500,000 per fiscal year for the fiscal years ending September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987, to carry out subsection (d).".*

### *COMPLIANCE DATES*

*SEC. 4. (a) Section 301(b)(2)(C) of the Clean Water Act is amended by striking "not later than July 1, 1984," and inserting immediately after "of this paragraph" the following: "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), or three years after July 1, 1983, whichever is later, but in no case later than July 1, 1987".*

*(b) Section 301(b)(2)(E) of the Clean Water Act is amended by striking "not later than July 1, 1984," and inserting in lieu thereof "as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), or three years after July 1, 1983, whichever is later, but in no case later than July 1, 1987, compliance with".*

*(c) Section 301(b)(2)(F) of the Clean Water Act is amended by inserting "as expeditiously as practicable but in no case" and striking "not" after "subparagraph (A) of this paragraph" and by striking "July 1, 1984" and inserting in lieu thereof "three years after July 1, 1983".*

*(d) Section 301(b) of the Clean Water Act is amended by adding the following new paragraph:*

> *"(3)(A) for effluent limitations under paragraph (1)(A)(i) of this subsection promulgated after January 1, 1982, and requiring a level of control substantially*

*greater or based on fundamentally different control technology than under permits for such industrial category issued before such date, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), or three years after July 1, 1983, whichever is later, but in no case later than July 1, 1987; and*

*"(B) for any effluent limitation in accordance with paragraph (1)(A)(i), (2)(A)(i), or (2)(E) of this subsection established only on the basis of section 402(a)(1) in a permit issued after enactment of the Clean Water Act Amendments of 1983, compliance as expeditiously as practicable but in no case later than three years after the date such limitations are established, and in no case later than July 1, 1987.".*

### *OCEAN WAIVER*

*SEC. 5. (a) Section 301(h)(5) of the Clean Water Act is amended to read as follows:*

*"(5) sources introducing waste into such treatment works are in compliance with all applicable pretreatment requirements and the applicant has assured continued compliance with such requirements and, in the case of any treatment works serving a population of five thousand or more, the applicant has adopted and is*

*enforcing a program to control the entrance of toxic pollutants from industrial sources into such treatment works, comparable to that required by section 402(b)(8);".*

*(b) Section 301(h) of the Clean Water Act is amended by—*

*(1) in paragraph (7), striking the period immediately after "the permit" and inserting in lieu thereof a semicolon.*

*(2) adding immediately after paragraph (7) the following new paragraph:*

*"(8) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment. For the purposes of this paragraph, "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate.";*

*(3) in that portion of subsection (h) following new paragraph (8) as added by this Act,*

*(A) adding immediately after the first sentence thereof the following new sentence: "Such marine waters must exhibit characteristics assur-*

*ing that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works."; and*

*(B) adding at the end thereof the following: "No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge.".*

*(c) Section 301(j)(1)(A) of the Clean Water Act is amended by inserting before the semicolon the following: ", except that a publicly owned treatment works which prior to December 31, 1982, had a contractural arrangement to discharge its sewage into another publicly owned treatment*

*works which has applied for or received a modification under subsection (h) of this section, may apply for a modification of subsection (h) in its own right not later than thirty days after the enactment of the Clean Water Act Amendments of 1983".*

### *WATER QUALITY-BASED EFFLUENT LIMITATIONS AFTER BAT ATTAINMENT*

*SEC. 6. (a) Section 305 of the Clean Water Act is amended by adding the following new subsection:*

*"(c) Each State shall prepare and submit to the Administrator and the Congress within two years after the enactment of the Clean Water Act Amendments of 1983, and revise biennially thereafter, an identification of—*

*"(1) those waters within or adjacent to such State which after the application of effluent limitations required under section 301(b)(2) of this Act cannot reasonably be anticipated to attain or maintain (A) water quality standards for such waters reviewed, revised or adopted in accordance with section 303(c)(2)(B) of this Act, due to toxic pollutants, or (B) that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water; and*

*"(2) those waters within or adjacent to such State which are public water supplies or otherwise important to public health protection, or which have a high quality use designation, and which because of such use and current or potential pollution are of high priority to such State.*

*In the case of any State which fails to submit the identification required by paragraph (1), or which submits an incomplete identification, the Administrator shall promptly prepare an identification in accordance with paragraph (1).".*

*(b) Section 304(a) of the Clean Water Act is amended by adding the following new paragraphs:*

*"(7) The Administrator, after consultation with appropriate State agencies and on the basis of criteria and information published under paragraphs (1) and (2) of this subsection, shall develop and publish, within nine months after the date of enactment of the Clean Water Act Amendments of 1983, guidance to the States on performing the identification required by section 305(c)(1) of this Act.*

*"(8) The Administrator, after consultation with appropriate State agencies and within two years after the date of enactment of the Clean Water Act Amendments of 1983, shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollut-*

*ants on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.".*

*(c) Section 303(c)(2) of the Clean Water Act is amended by inserting "(A)" after "(2)" and by adding the following new subparagraphs:*

*"(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 307(a)(1) of this Act, the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants and in addition may include criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 304(a)(8). Particular attention shall be given to toxic pollutants which are highly persistent in the environment, bioaccumulative, or known or suspected carcinogens, mutagens, or teratogens. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods.*

*"(C) In revising or adopting new water quality standards under this paragraph, a State (i) shall upgrade the des-*

*ignated use for a portion of the navigable waters to reflect the use actually being attained whenever the existing water quality standard specifies a use that is less protective or beneficial than that which presently is being attained, and shall adopt new or additional criteria to protect such use; and (ii) shall not adopt uses that would require less stringent criteria than those in existing standards unless such State demonstrates that such existing standards are unattainable. For the purposes of this paragraph a new or existing use is attainable unless its achievement is precluded by natural background levels of pollutants or irretrievable man-induced conditions in the water body, or where achievement of the standards through controls more stringent than those required by section 301(b)(2) of this Act would result in substantial and widespread adverse social and economic impact. In no case shall a State adopt waste transport or equivalent functions as a designated use for any navigable waters.*

*"(D) As part of its water quality standards program, each State shall implement a statewide antidegradation policy which shall, at a minimum, be consistent with the following:*

*"(i) existing uses actually attained in a water body and the level of water quality necessary to support such existing uses shall be maintained and protected; and*

*"(ii) the quality of waters whose existing quality exceeds those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate economic or social development essential to the area in which the waters are located, that there are no feasible and prudent alternatives to the water quality impact of such development, and that all practicable measures for point and non-point sources to reduce or offset such effects on water quality will be taken. In allowing such degradation the State shall provide for an adequate margin of safety in defining appropriate water quality criteria. In no event, however, may such degradation of water quality interfere with existing uses as required by clause (i). No degradation shall be allowed in high quality waters which constitute an outstanding National resource, such as waters of National and State parks, wilderness areas, wild or scenic rivers, wildlife refuges, and other waters of exceptional recreational or ecological significance.".*

*(d) Section 303(d) of the Clean Water Act is amended by adding the following new paragraph:*

*"(4) Not later than two years after the submittal of the identification required by section 305(c)(1) of this Act, each State shall establish effluent limitations for point sources discharging into each portion of the navigable waters identified under section 305(c)(1)(A) as necessary to attain applicable water quality standards, taking into account any substantial nonpoint source contributions of toxic pollutants and existing or planned controls on all sources. Such effluent limitations shall be incorporated into permits under section 402 of this Act, which shall provide for compliance as expeditiously as practicable, but in no event later than three years after the establishment of such effluent limitation.".*

*(e)(1) Section 302(a) of the Clean Water Act is amended by (1) inserting after "in the judgment of the Administrator" the phrase ", or as identified under section 305(c)"; and (2) inserting after "protection of" the phrase "public health,".*

*(2) Section 302(b) of the Clean Water Act is amended to read as follows:*

*"(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall publish such proposed limitation and within ninety days of such publication hold a public hearing.*

*"(2)(A) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for pollutants other than toxic pollutants, if the applicant demonstrates at such hearing that (whether or not technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act) from achieving such limitation.*

*"(B) The Administrator, with the concurrence of the State, may issue a permit which modifies the effluent limitations required by subsection (a) of this section for toxic pollutants for a single period not to exceed five years, if the applicant demonstrates to the satisfaction of the Administrator that such modified requirements (1) will represent the maximum degree of control within the economic capability of the owner and operator of the source, and (2) will result in reasonable further progress beyond the requirements of section 301(b)(2) toward the requirements of subsection (a) of this section.".*

*(f) Section 304 of the Clean Water Act is amended by adding the following new subsection:*

*"(l) Not later than three years after the date of enactment of the Clean Water Act Amendments of 1983, the Administrator shall publish regulations providing guidelines for*

*effluent limitations under subsection (b)(2) of this section and section 306 for categories of sources discharging significant amounts of toxic pollutants referred to in section 301(b)(2)(C), for which guidelines have not previously been published.".*

*INDIRECT DISCHARGE OF CONVENTIONAL POLLUTANTS*

*SEC. 7. Section 402 of the Clean Water Act is amended by adding at the end thereof the following new subsection:*

*"(m) In issuing a permit under this section, the Administrator shall not require pretreatment by dischargers of conventional pollutants identified pursuant to section 304(b)(4) of this Act as a substitute for municipal treatment adequate to meet the requirements of a permit issued under this section for a treatment works (as defined in section 212 of this Act) which is publicly owned if such discharger is in compliance with all applicable requirements of local pretreatment programs approved under subsection (b)(8) of this section. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.".*

### *CIVIL AND CRIMINAL PENALTIES*

*SEC. 8. (a) Section 309(d) of the Clean Water Act is amended by striking "$10,000" and inserting in lieu thereof "$25,000".*

*(b) No State shall be required to modify a permit program approved or submitted under section 402 of the Clean Water Act as a result of the amendment made by subsection (a) of this section before July 1, 1986.*

*(c) Section 309 of the Clean Water Act is amended by adding a new subsection (g) as follows:*

*"(g)(1) In addition to any other relief provided, whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 301, 302, 303, 306, 307, 308, 318, or 504 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by him or by a State, or in a permit issued under section 404 of this Act by a State, he may after notifying the State in which the violation occurs assess a civil penalty of not more than $10,000 per day of violation, not to exceed $75,000 in total.*

*"(2) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the viola-*

*tion. Such hearing shall not be subject to the requirements of section 554 or 556 of title 5, United States Code.*

*"(3) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.*

*"(4) Any person against whom a civil penalty is assessed under this subsection may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the Administrator, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have juris-*

*diction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty de novo.*

*"(5) The Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this subsection. In case of contumacy or refusal to obey a subpena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.*

*"(6) Action taken by the Administrator pursuant to this subsection shall not affect or limit the Administrator's authority to enforce any provision of this Act: Provided, however, That the discharge of pollutants which is penalized administratively under this subsection shall not be the subject of a civil penalty under section 309(d) or section 311(b) of this Act in a civil action commenced by the Administrator.".*

*(d) Section 309(c) of the Clean Water Act is amended to read as follows:*

*"(c)(1) Any person who (A) negligently violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage, or causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both.*

*"(2) Any person who (A) knowingly violates section 301, 302, 303, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed*

*in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army or by a State, or who (B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage, or causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State, shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than one year, or by both.*

*"(3) Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.*

*"(4) If a conviction is for a violation of paragraph (1), (2), or (3) of this subsection committed after a first conviction of such person under the same paragraph, the maximum pun-*

*ishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.*

*"(5) For the purpose of paragraphs (1), (2), and (3), the term 'person' shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.*

*"(6) For the purpose of paragraphs (1) and (2), the term 'hazardous substance' shall mean (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.".*

### *PARTIAL NPDES PROGRAM APPROVAL*

*SEC. 9. (a) Section 402(b) of the Clean Water Act is amended by—*

*(1) inserting ", or part of a permit program in accordance with paragraph (10) of this subsection," immediately after "its own permit program" in the first full sentence; and*

*(2) adding at the end thereof the following new paragraph:*

*"(10) In the event a Governor submits a plan to administer part of a permit program, the Administrator may approve such plan upon a showing that—*

*"(A)(i) the plan provides for administration of permit program components which represent a significant and identifiable part of the State program authorized by this section; and*

*"(ii) the plan provides for and the State agrees to make all reasonable efforts to assume administration of the remainder of the program by a specified future date not to exceed five years from submission of the State's initial plan; or*

*"(B)(i) the plan provides for administration of a permit program for one or more discharge categories such as Federal facilities, municipal or industrial categories, or any other category of dischargers which represent a significant and identifiable part of the permit program in the State; and*

*"(ii) the plan covers all categories of discharges under the jurisdiction of the State agency or department responsible for administering the plan and represents a complete permit program for all categories of discharges contained in the plan. For purposes of the preceding sentence, 'a complete permit program,' means one for which adequate authority exists to carry out each of the activities listed in paragraphs (1) through (9) of this subsection.".*

*(b) Section 402(c)(1) of the Clean Water Act is amended by striking "as to those navigable waters" and inserting in lieu thereof "as to those activities and discharges".*

*(c) Section 402(c) of the Clean Water Act is amended by adding a new paragraph (4) as follows:*

*"(4) In the event a determination is made (A) by a State to return administration of the program to the Administrator or (B) by the Administrator to withdraw approval pursuant to paragraph (3) of this subsection, return of administration or withdrawal of approval may only be made of the entire program currently being administered by the State.".*

### *NPDES PERMIT TERM AND REOPENER*

*SEC. 10. (a) Section 402(b)(1)(B) of the Clean Water Act is amended to read as follows:*

*"(B) are for fixed terms not exceeding ten years, unless a permit includes a waiver or modification of any otherwise applicable requirement under sections 301(c), (g), (h), or (m) of this Act, in which case such permit shall be for a fixed term not exceeding five years;".*

*(b) Section 402(b)(1)(D) of the Clean Water Act is redesignated as section 402(b)(1)(E), and a new section 402(b)(1)(D) is inserted after section 402(b)(1)(C) to read as follows:*

*"(D) shall be promptly modified whenever new or revised requirements under sections 301, 302, 303, 304, 307, 403, or 405 are established which are more stringent than any requirement in the permit or which control pollutants not limited in the permit and such modification implements these new or revised requirements;".*

### *JUDICIAL REVIEW AND AWARD OF FEES*

*SEC. 11. (a) Section 509(b)(1) of the Clean Water Act is amended by (1) striking the phrase "transacts such business" and inserting in lieu thereof, "transacts business which is directly affected by such action"; and (2) striking "ninety" and "ninetieth" and inserting in lieu thereof "one hundred and twenty" and "one hundred and twentieth", respectively.*

*(b) Section 509(b) of the Clean Water Act is amended by adding at the end thereof the following new paragraphs:*

*"(3)(A) If applications for review of the same agency action have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States and the Administrator has received written notice of the filing of one or more applications within thirty days or less after receiving written notice of the filing of the first application, then the Administrator shall promptly advise in writing the Administrative Office of the United States Courts that applications have been filed in two or more Circuit Courts of Appeals of the United States, and shall identify each court for which he has written notice that such applications have been filed within thirty days or less of receiving written notice of the filing of the first such application. Pursuant to a system of random selection devised for this purpose, the Administrative Office thereupon shall, within three business days of receiving such written notice from the Administrator, select the court in which the record shall be filed from among those identified by the Administrator. Upon notification of such selection, the Administrator shall promptly file the record in such court. For the purpose of review of agency action which has previously been remanded to the Administrator, the record shall be filed in the Circuit Court of Appeals of the United States which remanded such action.*

*"(B) Where applications have been filed under paragraph (1) of this subsection in two or more Circuit Courts of Appeals of the United States with respect to the same agency action and the record has been filed in one of such courts pursuant to paragraph (3)(A), the other courts in which such applications have been filed shall promptly transfer such applications to the Circuit Court of Appeals of the United States in which the record has been filed. Pending selection of a court pursuant to paragraph (3)(A), any court in which an application has been filed under paragraph (1) of this subsection may postpone the effective date of the agency action until fifteen days after the Administrative Office has selected the court in which the record shall be filed.*

*"(C) Any court in which an application with respect to any agency action has been filed under paragraph (1) of this subsection, including any court selected pursuant to paragraph (3)(A), may transfer such application to any other Circuit Court of Appeals of the United States for the convenience of the parties or otherwise in the interest of justice.*

*"(4) In any judicial proceeding under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party whenever it determines that such award is appropriate.".*

*(c) Section 505(d) of the Clean Water Act is amended by inserting "prevailing or substantially prevailing" before "party" in the first sentence thereof.*

### *NONPOINT SOURCE POLLUTION*

*SEC. 12. Title III of the Clean Water Act is amended by adding the following new section:*

### *"NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM*

*"SEC. 319. There are authorized to be appropriated for the purposes of implementing management programs for the control of nonpoint sources of pollution, to remain available until expended, $150,000,000 per fiscal year for fiscal years 1984, 1985, 1986, and 1987.".*

### *STORMWATER RUNOFF FROM MINING OPERATIONS*

*SEC. 13. Section 402(l) of the Clean Water Act is amended by inserting "(1)" after "(l)" and by adding the following new paragraph:*

*"(2) The Administrator shall not require a permit under this section nor impose effluent limitations, nor shall the Administrator directly or indirectly require any State to require such a permit or impose such limitations, for discharges of stormwater runoff from mining operations or oil or gas exploration, production, processing, or treatment operations, composed entirely of flows from conveyances or systems of conveyances (including pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and not*

*contaminated with process wastes, overburden, raw materials, toxic pollutants, hazardous substances in excess of reportable quantities, or oil or grease.".*

### *ANTI-BACKSLIDING*

*SEC. 14. Section 402 of the Clean Water Act is amended by adding the following new subsection:*

*"(n) Except as provided in this subsection, when a permit is renewed or reissued under this section, it shall not contain effluent limitations, standards, or conditions which are less stringent than the comparable final effluent limitations, standards, or conditions in the previous permit. If the source has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal or reissuance).".*

### *SEWAGE SLUDGE*

*SEC. 15. Section 405(d) of the Clean Water Act is amended by inserting "(1)" after "(d)", by striking "(1)", "(2)" and "(3)" and inserting in lieu thereof "(A)", "(B)" and "(C)", and by adding the following new paragraph:*

*"(2)(A)(i) Not later than six months after the enactment of the Clean Water Act Amendments of 1983, the Administrator shall identify those toxic pollutants which on the basis of available information on their toxicity, persistence, concentration, mobility, or potential for exposure, may be present in sewage sludge in concentrations which may adversely affect public health or the environment.*

*"(ii) Not later than eighteen months after enactment of the Clean Water Act Amendments of 1983, the Administrator shall identify those toxic pollutants not identified under subparagraph (A)(i) which may be present in sewage sludge in concentrations which may adversely affect public health or the environment.*

*"(B)(i) Not later than eighteen months after the enactment of the Clean Water Act Amendments of 1983, the Administrator shall publish regulations specifying acceptable management practices for sewage sludge containing each toxic pollutant identified under subparagraph (A)(i) and establishing numerical limitations for each such pollutant for each use identified under paragraph (1)(A). Such management practices and numerical limitations shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. Such regulations shall require compliance no later than six months after their publication.*

*"(ii) Not later than thirty months after the enactment of the Clean Water Act Amendments of 1983, the Administrator shall publish regulations specifying acceptable management practices for sewage sludge containing each toxic pollutant identified under subparagraph (A)(ii) and establishing numerical limitations for each such pollutant for each such use identified under paragraph (1)(A). Such management practices and numerical limitations shall be adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. Such regulations shall require compliance no later than six months after their publication.*

*"(iii) For purposes of this subparagraph, if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a numerical limitation for a pollutant identified under paragraph (2)(A), he may instead promulgate a design, equipment, management practice, or operational standard, or combination thereof, which in his judgment is adequate to protect public health and the environment from any reasonably anticipated adverse effects of such pollutant. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.*

*"(C) Nothing in this section authorizes the establishment of any requirement or time for compliance which is less stringent than required by any other law.".*

### *INTERSTATE DISPUTE RESOLUTION*

*SEC. 16. (a) Section 402(d)(2) of the Clean Water Act is amended by inserting "(A)" after "(2)", by striking "(A)" and "(B)" and inserting in lieu thereof "(i)" and "(ii)" respectively, and by adding the following subparagraph:*

*"(B) In the case of the failure of any State to accept the recommendations of another State whose waters may be affected by the issuance of a permit, submitted in accordance with subsection (b)(5), the Administrator shall determine whether any violation of a water quality standard of the affected State, adverse effect on public health, or other demonstrated harm to the interests of the affected State will result from the issuance of such permit. If the Administrator so determines, the Administrator shall object to the issuance of such permit. Any such determination shall be provided in writing to the affected State and such determination or such objection shall be reviewable in the appropriate Circuit Court of Appeals under section 509(b) of this Act as the issuance or denial of a permit under section 402.".*

*(b) Section 402(b)(1) of the Clean Water Act is amended by adding the following:*

*"(F) shall be reconsidered for termination or modification at any time a State other than that in which the source is located provides notice that the permitted discharge is adversely affecting the waters of such State and seeks a modification of such permit;".*

*(c) Section 511 of the Clean Water Act is amended by adding a new subsection (e) as follows:*

*"(e) Any State or municipality the water quality of which is adversely affected by pollutants or contaminants from another State may petition the Administrator who, upon determining on the record after opportunity for Agency hearing pursuant to 5 U.S.C. 554, 556, and 557 that such pollution or contamination endangers the public health or welfare, or causes or contributes to a violation of water quality standards or other demonstrable harm, shall issue an order restraining any person causing or contributing to such pollution or providing such other relief as is appropriate, taking into account the goals and requirements of this Act and other equitable considerations. In cases where the pollution complained of is discharged pursuant to permit, the petitioner must previously have exhausted relief available under section 402.".*

### *PRESERVATION OF OTHER RIGHTS*

*Sec. 17. Section 505(e) of the Clean Water Act is amended by inserting "(1)" after "(e)" and by adding the following new paragraphs:*

*"(2) Nothing in this Act shall be construed, interpreted, or applied to displace, preempt, or limit the rights or liabilities of any person under State common law.*

*"(3) Nothing in this Act shall affect or modify in any way the liabilities of any person under other Federal statutes for damages caused by noncompliance with any requirement of this Act or any permit issued under this Act.*

*"(4) Any person injured by an act or activity within the field covered by this Act may file an action and be granted relief which is provided under the statutory or common law of the State in which such person resides or in which the claim arose to the extent provided under such State law. A State or municipality may file an action in, or seek and receive removal to, a Federal district court in such State or the State in which the claim arose, in any case involving the application of State common or statutory law to an instance where a discharge of pollutants or other pollution arising in another State is alleged to have an adverse effect on the public health or welfare or the attainment of any water quality requirement of such State or municipality.".*

### *HAZARDOUS WASTE PRETREATMENT STUDY*

*SEC. 18. Section 516 of the Clean Water Act is amended by adding the following new subsection at the end thereof:*

*"(f) The Administrator shall, not later than two years after the date of the enactment of the Clean Water Act Amendments of 1983, submit a report to the Congress concerning hazardous wastes identified or listed under section 3001 of the Solid Waste Disposal Act which are excluded from regulation pursuant to subtitle C of the Solid Waste Disposal Act under regulations exempting mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works for treatment. Such report shall specify the types and quantities of such hazardous wastes which are exempted pursuant to such regulations and shall include recommendations respecting whether or not other provisions of law applicable to such mixtures are adequate to protect human health and the environment from hazards associated with such wastes or whether regulation of such mixtures under subtitle C of the Solid Waste Disposal Act is necessary for such purpose.".*

### *AD VALOREM TAX DEDICATION*

*SEC. 19. For the purposes of complying with section 204(b)(1) of the Clean Water Act, the ad valorem tax user charge system of the Town of Hampton, New Hampshire,* *shall be deemed to have been dedicated as of December 27, 1977. The Administrator of the Environmental Protection Agency shall review such ad valorem tax user charge system for compliance with the remaining requirements of section 204(b)(1) and related regulations of the Agency.*

Amend the title so as to read: "To amend the Clean Water Act, to authorize funds, for fiscal years 1984, 1985, 1986, and 1987, and for other purposes.".

# Calendar No. 494

98th Congress
*1st Session*

SENATE

Report
No. 98–282

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# NONPOINT SOURCE POLLUTION MANAGEMENT ACT OF 1983

October 26 (legislative day, October 24,) 1983.—Ordered to be printed

Mr. Stafford, from the Committee on Environment and Public Works, submitted the following

## REPORT

[To accompany S. 2006]

The Committee on Environment and Public Works, reports an original bill (S. 2006), to amend the Clean Water Act to provide for a program for reduction of nonpoint sources of pollution and recommends that the bill do pass.

### Purpose of Legislation

The purpose of the legislation is to assure that the States develop effective management programs to reduce nonpoint sources of pollution and provide Federal financial and technical assistance for the implementation of those management programs.

### Related Legislative History

It is the intention of the Committee to join the texts of this bill and S. 431 into a single, committee-sponsored amendment to S. 1288. That bill, containing a one-year authorization for the Clean Water Act, was reported May 16, 1983, in order to comply with requirements of the Congressional Budget Act. When the Senate adopts the committee-sponsored amendment to S. 1288, the legislative history of S. 1288 shall then include the report on S. 431 (S. Rept. 98–233) and this report. S. 1288, as amended, will be known as the "Clean Water Act Amendments of 1983".

### General Statement

Nonpoint source pollution is runoff pollution. Its sources are diverse: urban runoff from roofs and paved areas, return flows from irrigated agricultural lands, runoff from lands disturbed by construction, for-

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estry operations and agricultural practices, and uncollected runoff and seepage from mining areas. As the Clean Water Act's requirements exert greater control over point sources of pollution, nonpoint sources emerge as the major impediment to attaining and maintaining water quality standards and achieving the goals and objectives of the Act in many water bodies. In reports to the Environmental Protection Agency, States have identified nonpoint sources as a major problem preventing attainment of the goals of the Clean Water Act.

Although the nature of nonpoint source pollution problems varies from place to place, these sources have been found to be a significant cause of many water quality problems across the United States. According to various estimates, they are responsible for 49 to 76 percent of oxygen-demanding organic materials, 66 to 99 percent of suspended solids, 83 to 85 percent of dissolved solids, 80 to 92 percent of nitrogen, 42 to 94 percent of phosphorous, up to 98 percent of the bacteria, and are also a major source of pesticides, lead, zinc, cadmium, and copper entering the Nation's waters. In reports submitted to the Environmental Protection Agency pursuant to section 305(b) of the Clean Water Act, State officials have identified nonpoint sources as a significant contributing factor in a large majority of the stream segments which have not attained water quality standards. Recent intensive analyses of pollution problems in the Great Lakes and the Chesapeake Bay have identified such sources as being an important cause of the water quality problems these water bodies are experiencing. While the nature and amount of nonpoint source pollution varies from place to place, the results are all too familiar—siltation that smothers fish and aquatic life, nutrient enrichment that accelerates eutrophic conditions and strips oxygen from the water, and accumulation of pesticides and other toxic substances that can contaminate fish and shellfish and enter the human food chain.

In addition to nonpoint sources preventing the attainment of the goals of the Clean Water Act in many stream segments and lakes, these sources exact an unknown but undoubtedly high cost from the Nation in loss of reservoir capacity, increased water treatment costs, depressed fisheries, decreased land productivity and other such effects as a result of the high loads of sediment and other pollutants entering the Nation's waterways from uncontrolled runoff. One witness before the Committee estimated this cost to be about $2.5 to $3.0 billion per year.

Although the Clean Water Act has proven effective in reducing pollution from point sources such as factories and municipal sewage treatment plants, it has not dealt adequately with the types of nonpoint source pollution described above. Nonetheless, several Clean Water Act programs have helped lay a foundation of knowledge and experience for the programs required by this bill.

For example, section 208 of the Clean Water Act established a planning process that has been instrumental in identifying the sources of nonpoint pollutants and the environmental damage caused by such pollutants to the Nation's estuaries, lakes, and rivers. This planning process has also fostered the development in some States of programs to address the problems posed by nonpoint sources of pollution. Also, grants under the Clean Lakes Program (section 314) and the Great

Lakes Program (section 108(a)) have been used to demonstrate the feasibility and effectiveness of various nonpoint source control practices.

The Department of Agriculture's Experimental Rural Clean Water Program, which is modeled closely on a similar program authorized by section 208(j) of the Clean Water Act, has demonstrated the effectiveness of cooperative efforts at the local level in achieving implementation of agricultural practices to reduce nonpoint source pollution. Other Department of Agriculture programs, especially those administered by the Soil Conservation Service and the Agricultural Stabilization and Conservation Service, have spent decades developing land conservation techniques which, in many cases, can be useful in a water quality protection program.

Nonpoint source pollution is a nationwide problem. It is important in all States, and nearly a fifth of the States report that nonpoint source pollution is the most important cause of water quality degradation. This bill requires States to design and implement a program to control nonpoint sources of pollution in the Nation's estuaries, rivers, and lakes. It calls for a targeted attack on the problem. Programs are required only in watersheds where the waters are not expected to attain or maintain the water quality standards or goals of the Clean Water Act because of nonpoint source pollution. The bill requires the States to address those types of nonpoint sources that are interfering with the achievement of these standards or goals. It places the major responsibility for designing and implementing the program at the State level and provides the States with substantial flexibility in defining best management practices to reduce runoff and in designing and implementing a suitable program to achieve implementation of the practices by identified sources.

This bill requires implementation, not more planning. Numerous witnesses testified before the Committee that States and local and regional organizations have sufficient experience and knowledge based upon earlier planning efforts to move quickly into the implementation phase. Agriculture and forestry interests also testified that they understand the importance of the nonpoint source problem, that they know how to reduce nonpoint source loadings, and that they are committed to doing so.

Due, in part, to previous Clean Water Act planning and research programs, there exists a broad array of effective best management practices available to control nonpoint sources of pollution. For controlling agricultural runoff, these practices include improved methods of tillage and crop rotation, the use of grassed waterways and buffer strips, proper application of fertilizers and pesticides, and improved management of animal wastes and feedlots. The most appropriate set of practices depends on a variety of site-specific factors such as crops, soil type, and slope of the land. This legislation allows the State to use its discretion in deciding what practices are most appropriate for a particular source or category of source.

In many cases, implementation of best management practices will benefit not only the quality of the receiving waters but the farmer as well. Reducing topsoil loss to an acceptable level and keeping fertilizers and pesticides on the farmland rather than in the water often are in the best economic interest of the farmer. For example, the Department of Agriculture has estimated that over 15 percent of the fertilizer applied to cropland is washed into nearby waterways, thus wasting millions of dollars as well as polluting the water.

As with farming, best management practices related to grazing involve managing grazing lands to maintain and perpetuate the productive capability of the land. For example, overgrazing reduces vegetation, leaving the soil exposed and subject to erosion. Implementation of best management practices on grazing lands can increase both the quality and the quantity of water.

Additional rural sources of nonpoint pollution include such activities as timbering and surface mining. Timbering and mining activities can result in sediment runoff choking nearby streams. Mining operations can also result in serious nonpoint source pollution problems from acid mine drainage and leaching of toxic metals. Best management practices exist that currently are used at some sites to control sediment runoff and acid mine drainage. Use of these practices should be expanded to reduce nonpoint source pollutant loadings from these operations. For example, water pollution from forestry operations can be reduced greatly by proper placement and management of logging roads, culverting, and establish cover on exposed soil.

Urban runoff presents special concerns because of the presence of large quantities of toxic heavy metals and other toxic compounds, as well as bacteria, phosphorous, nitrogen, and organic materials that strip oxygen from the water. Large paved surfaces allow pollutants to accumulate during dry periods, allowing high concentrations of pollutants, including toxicants, to run off in large quantities after heavy rains. Additionally, earth moving activities related to residential and commercial construction represent an enormous potential for sediment runoff. The planning phase of residential and commercial development provides an excellent opportunity to incorporate runoff controls, thereby preventing problems rather than attempting to correct existing problems. Some States and local jurisdictions have implemented progressive requirements, such as straw bale barriers, to control storm water runoff related to construction activities. Best management practices for reducing urban runoff also may include infiltration devices, grassed waterways and storage basins. While retrofitting such controls in existing urban areas may be costly, such practices should be implemented, when appropriate, in new development activities.

The bill focuses on identifying water bodies in which water quality standards or the goals of the Act will not be attained or maintained. In addition, the States should consider the need to protect high quality waters from degradation resulting from change in land usage. Concern has been expressed regarding "sod busting" activities, where previously uncultivated lands are converted into agricultural croplands. These activities, if not carried out with a sensitivity to maintaining water quality, can result in severe environmental problems from high sediment runoff. As with commercial and residential development, States can prevent water quality problems from occurring through implementation of best management practices in development of new agricultural lands. The adage "an ounce of prevention is worth a pound of cure" is especially appropriate in addressing the widepread problems of nonpoint source pollution from developing as well as existing sources.

It is critical that greater efforts be made to reduce nonpoint sources of pollution, and the Committee considered several different proposals for an amendment to achieve this result. Some of these proposals involved deadlines for implementation of needed management practices and a strong Federal role in oversight and implementation in the event of inadequate response by States or particular nonpoint sources. The Committee ultimately selected the approach adopted in this bill because it allows maximum opportunity to States to develop programs that they believe will be most effective in their particular circumstances. The objective of these programs must be implementation of best management practices by sources, and the success of the approach set forth in this bill will be judged by its effectiveness in meeting this objective.

## Section-by-Section Analysis

### SHORT TITLE

Section 1 of the bill, as reported, provides that this bill may be cited as the "Nonpoint Source Pollution Management Act of 1983."

### NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM

Section 2 of the bill adds a new section 319 to title III of the Clean Water Act. The new section 319 requires States to develop nonpoint source pollution management programs, specifies the elements of those programs, and provides for Federal approval and financial assistance in the implementation of approved State programs.

### DEVELOPMENT OF STATE PROGRAMS

Section 319(a)(1) requires each State, individually or in combination with adjoining States, to submit a proposed nonpoint source pollution management program to the Administrator of the Environmental Protection Agency within 18 months of enactment of this legislation. Such a program must:

(A) identify waters which are not expected to attain applicable water quality standards or Clean Water Act goals without control of nonpoint sources;

(B) designate categories, subcategories, or particular nonpoint sources that contribute significant nonpoint pollution to those waters;

(C) identify best management practices (BMPs) which will be undertaken to reduce pollution in each category or subcategory;

(D) identify programs to be used to achieve implementation of identified BMPs, by the designated nonpoint sources, including nonregulatory or regulatory programs for enforcement, technical and financial assistance, education, training, technology transfer, and demonstration projects;

(E) include a schedule containing annual milestones for utilization of the programs identified in (D) and implementation of the BMPs identified in (C) at the earliest practicable date;

(F) assure that existing State laws are adequate to carry out the proposed program, or contain a stated intent to seek additional needed authority together with a proposed schedule; and

(G) identify Federal financial assistance programs and Federal development projects to be reviewed by the State for their consistency with its proposed program.

The provision that adjoining States may develop proposed programs together is intended to promote cooperative actions among States to deal with water quality problems in downstream States when those problems are, in part, a result of nonpoint source loadings in upstream States. Downstream water quality problems may result from transboundary delivery of pollutants that are not sufficient to cause identification of the waterbody by the upstream State, but which nonetheless contribute substantially to water quality problems in the downstream State. Until those upstream sources of nonpoint pollution are brought into the program, the nonpoint source pollution problem in the downstream State may not be adequately addressed, as no meassure of control applied in the downstream State will affect the pollution in the upstream State. In such cases, the upstream State may have little incentive to incur program costs that will result in water quality benefits primarily to the downstream State. The Administrator is given the authority to provide extra funding for such interstate cooperative efforts in section 319(d)(2)(B). A joint or cooperative management program may also be appropriate when the affected water body is shared by more than one State, e.g., an estuary lying in two or more States or a lake or river that forms the boundary between two States.

Subsection (a)(1)(A) requires each State to identify those particular waters within its boundaries which, after implementation of point source controls, will not attain or maintain water quality standards or the goals and requirements in the Act without controlling nonpoint sources of pollution. The State need not demonstrate that the nonpoint sources of pollution are the sole cause for the water quality standards not being attained or maintained. The fact that the standards are not likely to be attained or maintained under existing conditions in the reasonably near future, and that there are loadings of pollutants from nonpoint sources of pollution that can reasonably be expected to be contributing to the water quality problems, should suffice for a State to identify such waters under subsection 319(a)(1)(A). In identifying such waters, the State should not focus only on the immediately adjacent waters to nonpoint sources, but also consider downstream segments, lakes, and other water bodies where such pollutants may accumulate and cause water degradation.

The reference both to water quality standards and to the goals and requirements of the Clean Water Act arises from the fact that not all water quality standards yet reflect the Act's goals and requirements. In such cases, identification and control of nonpoint sources can contribute to improvement in water quality and upgrading of water quality standards.

In section (a)(1)(B), the term "significant" is inserted to exclude trivial sources of pollutants or sources of pollutants which are not related to the water quality problems identified in subparagraph (A).

The term "categories" in this subsection could include sources such as cropland, rangeland, pastureland, forestland, construction sites, industrial sites, mines, residential areas, streets, roads, highways, other developed land, and wild areas. Within each of these categories, subcategories can be defined on the basis of characteristics such as geographical location, type of activity, size of facility, topography, and other factors. The State has broad discretion to establish categories and subcategories that make sense in terms of the types of nonpoint source pollution problems and the type program that the State will implement to control them. However, the categorization must be sufficiently comprehensive to include all significant sources.

"Particular nonpoint sources" could be identified when they, in and of themselves, are significant contributors of pollutants, or in some way are sufficiently unique that they cannot reasonably be included in one of the categories or subcategories.

The term "best management practices" in subsection (a)(1)(C) is left undefined in the bill because of a concern that any definition would limit the States' flexibility and perhaps undercut existing programs in which best management practices (BMP's) already are being implemented. The term encompasses a broad array of management practices that can be undertaken, alone or in combination, to reduce nonpoint sources of pollution. For example, in soil conservation programs over forty BMP's have been identified, including conservation tillage, grassed waterways, cover crops, undisturbed field perimeters near waterways, and terracing. The selection of the appropriate BMP's in a particular instance would depend upon soil type, topography, desired crop, costs of implementation, and other factors. Simple and cost-free changes in agricultural practices, such as careful scheduling and application of fertilizer and pesticides, may reduce runoff of these pollutants, thereby resulting in cost savings to the farmer.

Best management practices have also been identified for reducing runoff from urban areas (e.g., storm water containment structures), construction areas (e.g., erosion barriers such as straw bales and dikes), silviculture areas (e.g., careful road placement, culverting, grassing of abandoned roads and skid trails), and grazing lands (e.g., herd and vegetation management).

Subsection (a)(1)(D) allows a State the flexibility to construct a management program containing regulatory or nonregulatory components, or a mixture of the two. The list of possible program elements is not intended to be exclusive. It is expected that States will differ in the program strategies they adopt. However, a State program must have a clear purpose: to achieve implementation of BMP's by the identified sources. The State is expected to show how its management program will provide reasonable assurance that appropriate control measures will actually be adopted by the sources identified in subsection (a)(1)(B). Further, the State is required to commit itself to a schedule containing milestones for implementation of BMP's by sources. This is a requirement that the State take responsibility for the effectiveness of its program in terms of getting BMP's implemented by sources, as distinct from merely committing to carry out its identified program activities. The Administrator, in awarding subsequent program grants pursuant to subsection (d), must consider the State's record in meeting these commitments and determine that the State is satisfactorily implementing its program.

Milestones for both program implementation and BMP implementation by sources must be established to provide for implementation at the earliest practicable date. This requirement reflects the importance of the nonpoint source pollution problem and is intended to demonstrate congressional intent that BMP's be implemented expeditiously. Consistent with this general requirement, States may establish different milestones for different categories of sources. No single date or statutory schedule is included in order to allow the State to take account of variations in the number and types of sources and pollutants and differing degrees of difficulty in achieving pollutant reductions. Similarly, different States may commit to different schedules based on characteristics of the State program.

In subsection (a)(1)(F), the term "as expeditiously as practicable" takes into account the current laws of the State or local governments and the schedule for meetings of the legislature, but indicates that, taking account of these factors, the needed authorities will be adopted as quickly as they can.

The bill also vests authority with the States in subsection (a)(1)(G) to identify Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications and development projects for their effects on water quality to determine if they are consistent with the State's nonpoint source pollution management program.

This subsection is based on the current provisions in Executive Order 12372. This Executive Order, issued by President Reagan, establishes procedures by which State authorities may comment upon applications for Federal assistance and Federal development projects to assure that the federally supported activities and projects are consistent with State needs and objectives. This bill assures that the provisions of the Executive Order, as in effect on September 17, 1983, will be applicable to the State's implementation of this review process, with respect to its nonpoint source management program, regardless of any subsequent revisions of the Executive Order. The bill also allows States to designate any Federal assistance program or development project listed in the most recent Catalog of Federal Domestic Assistance, rather than just those programs and projects subject to the current Executive Order 12372. The purpose of this provision is to allow the State's review to include any Federal program or project that the State determines needs to be reviewed for consistency with its nonpoint management program. This subsection, in conjunction with subsection (f)(1), builds upon established procedures for State review of Federal activities. These subsections provide the States with an important tool to assure that proposed Federal assistance and development projects are implemented in a manner which the State deems consistent with its nonpoint source pollution management program.

Subsection (a)(2) gives the States authority to use information developed under other pertinent sections of the Clean Water Act in the development of their programs, particularly the section 208(b) waste treatment management plans, if the State determines those plans to be consistent with the goals and objectives of this new section. Subsection (a)(3) gives the States authority to make use of local agencies or organizations in the development and implementation of their programs. This would include agencies receiving funding under section 205(j) and soil conservation districts.

In many cases, information and institutional relationships developed under the section 208 planning process will be relevant to, and consistent with, the requirements and objectives of this bill. Many States used the section 208 planning process to gather needed data about nonpoint source pollution and to promote local and regional cooperative pollution control efforts. In such cases, the State is encouraged to build upon these program elements in constructing the program required by this bill. However, the bill does not require the use of section 208 plans or local agencies and organizations because some State programs have evolved well beyond the section 208 planning effort, and also because some States gave inadequate or inappropriate attention to nonpoint sources in their 208 plans. In any case, the State has the flexibility to select the program elements that will most effectively fulfill the requirements and objectives of this bill.

### FEDERAL REVIEW AND APPROVAL

Subsection (b) describes the responsibilities of the Administrator of the Environmental Protection Agency subsequent to the submission of a State's proposed management program. The Administrator is given a maximum of six months after receipt of a State program in which to determine its compliance with the requirement of subsection (a)(1). If he determines that it does not comply, he must notify the State of any modifications necessary to obtain approval. The State is then given three additional months to submit a revised program, to be approved or disapproved by the Administrator within three months of receipt.

If the Administrator determines that a State management program meets the requiremetnts in subsection (a)(1), he must approve the program. If he fails either to approve or request modification of a submitted State program within six months of receipt, the program is deemed to be approved. Likewise, if the Administrator fails to approve or disapprove a program revised at his request within three months of receipt, such a revised program is deemed to be approved. This provision is intended to assure that implementation of programs to control nonpoint sources of pollution are not delayed because of inaction on the part of the Administrator.

In determining whether the proposed program meets the requirements and objectives of subsection (a)(1), the Administrator should take into account any public comments he has received, including those of downstream States that may be affected by the program. The bill does not provide precise criteria for program aproval because it is expected that programs may vary from State to State. However, the Administrator's review should involve considerably more than a checklist of required program elements. The Administrator must review submitted programs in light of the objective of the bill, which is to achieve reduction of nonpoint source pollutant loadings by the implementation of best management practices by sources and to do so at the earliest practicable date. Before approving the program and awarding Federal grants to support its implementation, he should be persuaded that the program is capable of meeting this objective.

### FEDERAL IDENTIFICATION OF POLLUTION PROBLEMS AND SOURCES

Subsection (c) pertains to States which fail to submit a nonpoint source management program consistent with subsection 319(a)(1). After the Administrator notifies such State, he must carry out the requirements of section 319(a)(1) (A) and (B) on behalf of that State. The Administrator is thus required to identify waters within the noncomplying State exhibiting nonpoint pollution problems and designate categories or subcategories of significant contributors to that pollution. Any actions of the Administrator pursuant to this subsection shall be reported to Congress.

The purpose of this provision is to make Congress aware of the extent of nonpoint source pollution problems that are not being addressed because of failure to comply with the requirement of this section that States implement a nonpoint source pollution management program. Thus, there will be available to Congress, in a timely fashion, information on the causes and problems of nonpoint source pollution on a nationwide scale for noncomplying States, as well as complying States. Such information will be needed for future decisions on nonpoint source pollution control.

### PROGRAM IMPLEMENTATION GRANTS

Subsection (d) authorizes Federal grants to States to assist them in implementing approved management programs and authorizes funds to be appropriated to the Environmental Protection Agency for the administration of this new section. The Federal grants are not to exceed 75 per centum of the costs of implementing the State management program. Non-Federal funds must be equal to at least 25 per centum of the costs being paid for by the Federal grant. This requirement will ensure adequate State financial involvement while providing necessary Federal financial assistance.

Two-thirds of the Federal funds for grants are to be allotted to the several States (as defined in the Clean Water Act) based on the table included in the bill. These funds can then be awarded to States with approved management programs to the extent they contribute the required 25 per centum matching funds. The table in subsection (d)(2)(A) presents a percentage allotment for the fifty States, the District of Columbia, and Puerto Rico, computed on factors of population and acreage in production. No State is allotted less than one-half of one per centum of the total two-thirds grant allotment.

The allotment table also provides that one-tenth of one per centum of the allotted funds shall be available for grants to each of the following: American Samoa, Guam, Northern Marianas, Pacific Trust Territories, and the Virgin Islands. The amount of one-tenth of one per centum was selected because of the small populations and acreages in production in each of these areas.

Subsection (d)(2)(B) authorizes the Administrator to award discretionary grants to States (as defined in the Clean Water Act) from the one-third portion of the funds appropriated for grants that he holds in reserve. This provision is intended to give the Administrator authority to provide additional financial assistance in addition to that provided under the allocation formula to States that are seeking to control particularly difficult or serious nonpoint source pollution problems, to implement innovative control methods, or to control interstate nonpoint pollution problems. These grants are to be awarded at 75 per centum of the cost with non-Federal funds paying 25 per centum of the costs.

This provision is intended to provide an additional financial incentive to States to implement the three types of program initiatives described above. These discretionary funds may be used, for example, to address particularly difficult nonpoint source pollution problems. In such cases, the environmental benefits from controlling the pollution may be large, but the State may be reluctant to devote a disproportionate amount of its program funds to one problem. Also, it may be the case that the allotment formula imperfectly distributes Federal funds to the States with the most extensive problems. In such cases, the Administrator is expected to use the discretionary funds to achieve more effectively the objectives and requirements of this bill. Additional funding to States with particularly difficult problems will result in more expeditious implementation schedules and more rapid reduction in nonpoint source pollutant loadings.

The Administrator also is expected to support States' efforts to develop innovative nonpoint source pollution control practices. Again, the States may perceive little incentive to devote program grant resources to innovation and may properly be reluctant to stake program schedules and commitments on the success of innovative practices. In such cases, the Administrator may support the State's innovative efforts from the discretionary funds.

As discussed above, interstate nonpoint source pollution problems may be difficult because the program costs to control the pollution may accrue mostly to one State while the environmental benefits accrue mostly to another. In such cases, the Administrator may supply additional discretionary grants to the appropriate State, or may provide additional funding to a joint or cooperative interstate program.

Though these funds are discretionary, the Administrator is expected to use all available funds to support the activities for which they are intended, as described above, in response to applications from the States that meet the requirements and objectives of this bill.

Subparagraph (d)(2)(B) also authorizes the Administrator to make funds available directly to Indian tribes to implement nonpoint source pollution management programs consistent with subsection (a)(1). Such grants will be for 75 per centum of the costs of implementation with the tribes providing 25 per centum of the costs.

Subsection (d)(3) provides that any funds not obligated in the fiscal year for which they were appropriated shall be reallotted to the States according to the table in paragraph (d)(2)(A) in the following fiscal year. This applies to funds not obligated by the Administrator under both subparagraphs (A) and (B) of subsection (d)(2).

Subsection (d)(4) provides that States may use Federal funds authorized by this bill for financial assistance to persons only insofar as the assistance is related to costs of implementing demonstration projects. These Federal funds are not to be used as a general subsidy or for general cost sharing to support implementation of best management practices by persons. However, a State is not precluded from using or directing other funds for cost sharing or other incentive programs if it so chooses.

The term "demonstration projects" includes projects designed to educate persons about the application of best management practices and to demonstrate their feasibility and utility as well as research projects to establish the feasibility or cost effectiveness of best management practices.

Initial program grants are required to be awarded to States whose programs meet the requirements of subsection (a)(1). Subsection (d)(5) requires the Administrator to determine, before awarding a subsequent grant to a State, that such State is satisfactorily implementing its management program consistent with its commitments to schedules and milestones. The determination under this subsection is important to assure that States are effectively implementing their programs and that Federal funds obligated under this section are being used effectively to achieve the objectives of this bill.

Subsection (d)(6) authorizes the Administrator to request such information, data, and reports as he may deem necessary to determine future eligibility for grants under this section. Under the authority of this subsection, the Administrator may request information about the management of Federal funds obligated to the States in order to assure that the funds are being used in a manner consistent with the requirements and objectives of this bill and with applicable regulations. If a State refuses to submit information, data, and reports requested by the Administrator, the Administrator should withhold a State grant authorized under this section.

Subsection (d)(7) authorizes $70 million for fiscal year 1985; $100 million for fiscal year 1986; and $130 million for fiscal year 1987. These funds are authorized to be appropriated for grants to the several States pursuant to the provisions of this subsection and for the payment of salaries and expenses of the Environmental Protection Agency necessary to administer that Agency's obligations under this new section.

### STATE REPORTS

Subsection (e) requires each State to submit an annual report to the Administrator on its progress in meeting the schedule submitted pursuant to subsection (a)(1)(e) of this section and, to the extent possible, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

### REQUIREMENTS OF EPA AND OTHER FEDERAL AGENCIES

Subsection (f)(1) requires the Administrator to transmit to the Office of Management and Budget and appropriate Federal agencies a list of the assistance programs and development projects which each State has identified for review pursuant to the authority of subsection (a)(1)(G) of this bill. Beginning no later than 60 days thereafter each Federal agency is required to amend applicable regulations so that individual assistance applications and projects for the identified programs and development projects are submitted for State review. The appropriate agencies and departments of the Federal Government are required to accommodate, according to the requirements and definitions of Executive Order 12372 (as in effect on September 17, 1983), concerns the State may express about consistency of projects or activities with the State's nonpoint source pollution management program.

The intent of this provision was explained partially in the discussion of subsection (a)(1)(G) earlier in this report. Where the earlier subsection authorized the State to identify Federal programs and development projects for review, this subsection establishes the Federal responsibilities in response to such identifications by the States.

The purpose of the State review is to assure consistency of these Federal activities with the State's nonpoint source management program. If the State expresses a concern about consistency, the Federal agency is required to accommodate the State's concerns according to the requirements and definitions of Executive Order 12372 as in effect on September 17, 1983. The Committee's intent, therefore, is not to invent new procedures for Federal/State coordination, but rather to incorporate existing procedures by reference into the Clean Water Act. This is an important provision because, without adequate State review, Federal activities over which the State has no direct authority could undercut its program and its water quality goals, possibly jeopardizing the State's ability to meet its program commitments under this section.

Subsection (f)(2) requires the Administrator to establish an information clearinghouse for information pertaining to the costs and relative efficiencies of best management practices and the relationship between water quality improvement and the implementation of various practices. The purpose of this provision is to promote information sharing among the States and to provide the basis for technical assistance to State programs.

Subsection (f)(3) requires the Administrator, within three years of enactment, to submit to Congress a report, based on information submitted by the States and such other information as appropriate, describing the management programs being implemented by the States and their experiences in adhering to schedules and implementing best management practices. This report must also describe the amount and purpose of grants awarded under this program; identify the progress made in reducing pollutant loads and improving water quality; and indicate what further actions need to be taken to reduce nonpoint source pollution in the context of the program.

The purpose of this report as well as any reports made to Congress under subsection (c), is to give Congress the information it will need to determine whether the approach taken in this legislation is adequate. This report will document the progress made under this approach and will provide information that will help determine the necessity of future statutory revisions.

### FEDERAL AGREEMENTS

Section 3 of the bill amends existing section 304(k)(1) of the Clean Water Act to incorporate a reference to this new section 319. Existing section 304(k)(1) requires the Administrator to enter into agreements with the Secretaries of Agriculture, Interior, and Army and the heads of other appropriate departments and agencies to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act. This amendment would establish the same requirement in terms of management programs developed pursuant to this section.

## COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, D.C., October 20, 1983.*

Hon. ROBERT T. STAFFORD,
*Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for the Nonpoint Source Pollution Management Act of 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM
(For Rudolph G. Penner, Director).

### CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

OCTOBER 20, 1983.

1. Bill number: Not yet assigned.

2. Bill title: The Nonpoint Source Pollution Management Act of 1983.

3. Bill status: As ordered reported by the Senate Committee on Environment and Public Works, September 21, 1983.

4. Bill purpose: The bill amends the Clean Water Act by adding a new section that creates a nonpoint source pollution management program to be administered by the Environmental Protection Agency (EPA), and authorizes appropriations for fiscal years 1985 through 1987.

Under the new program, each State is required to submit a proposed nonpoint source pollution management program to the EPA Administrator. The Administrator is authorized to award matching grants for implementing approved programs. From each year's appropriation, two-thirds is to be allocated by formula and the remaining one-third may be awarded at the Administrator's discretion for particularly serious or difficult problems, innovative procedures, interstate nonpoint source pollution problems, and financial aid to Indian tribes for implementing approved programs.

5. Estimated cost to the Federal Government:

| | *Millions* |
|---|---|
| Authorization level: | |
| Fiscal year: | |
| 1984 | --- |
| 1985 | $70 |
| 1986 | 100 |
| 1987 | 130 |
| 1988 | --- |
| Estimated outlays: | |
| Fiscal year: | |
| 1984 | --- |
| 1985 | 28 |
| 1986 | 65 |
| 1987 | 94 |
| 1988 | 63 |

The costs of this bill fall within budget function 300.

Basis of estimate: The authorization levels are those stated in the bill. For purposes of this estimate, it was assumed that the full amounts authorized will be appropriated prior to the start of each fiscal year. Outlays were assumed to occur at a rate similar to that for existing EPA grant programs.

6. Estimated cost to State and local governments: This bill requires States to submit a nonpoint source pollution management plan to the EPA within eighteen months after enactment of the Clean Water Act Amendments of 1983. Based on information from several States, the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), and the National Association of Conservation Districts (NACD), most States will not incur significant additional costs if ongoing activities can be modified to suit the requirements of the EPA. However, should the EPA require substantially different information from that which is presently generated by the States, additional costs will be incurred. It is estimated that costs for plan preparation will range from approximately $50,000 to $250,000 for most States.

States that have received EPA approval of this nonpoint source pollution management plan are eligible for implementation grants totalling $70 million in fiscal year 1985, $100 million in fiscal year 1986, and $130 million in fiscal year 1987. A 25 percent nonfederal contribution is required for those States that wish to participate. If all the grant funds are appropriate and disbursed, the State contributions would total approximately $100 million over the period from 1985 through 1991.

7. Estimate comparison: None.

8. Previous CBO estimate: On September 21, 1983, the Congressional Budget Office prepared a cost estimate for S. 431, the Clean Water Act Amendments of 1983, as ordered reported by the Senate Committee on Environment and Public Works, June 28, 1983. That bill authorized annual appropriations of $464 million for fiscal years 1984 through 1987, including $150 million per year for a nonpoint source pollution management program.

9. Estimate prepared by: Anne Hoffman and Mary Ann Curtin.

10. Estimate approved by:

C. G. Nuckols
(For James L. Blum,
Assistant Director for Budget Analysis).

## EVALUATION OF REGULATORY IMPACT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of the reported bill.

The reported bill requires States to develop nonpoint source pollution management programs to be reviewed and approved by the Administrator of EPA. This provision is consistent with existing provisions under the Clean Water Act to control pollution of the Nation's waters. It is not expected that there will be any new regulatory burden created by this new provision, beyond that currently authorized by the Act.

## ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of this bill be announced in this report.

The Committee vote to report this bill is announced as 16–0.

Voting in the affirmative to report the bill from the full Committee were Senators Stafford, Baker, Chafee, Simpson, Abdnor, Symms, Domenici, Durenberger, Humphrey, Randolph, Bentsen, Burdick, Hart, Moynihan, Mitchell, and Baucus.

## HEARINGS

The Committee held hearings on July 19, 1983 in Washington, D.C., and on August 24, 1983, in Moorhead, Minnesota. The testimony and exhibits have been included in the hearing record.

The Commitee had one mark-up session on September 21, 1983, and voted to order the bill reported.

## CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman:

## FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED

(33 U.S.C. 466 et seq.)

**AN ACT To provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

* * * * * * *

## TITLE III—STANDARDS AND ENFORCEMENT

* * * * * * *

### INFORMATION AND GUIDELINES

SEC. 304. (a)(1) * * *

* * * * * * *

(k)(1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act **[.]** *and nonpoint source pollution management programs approved under section 319 of this Act.*

* * * * * * *

### *NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM*

*SEC. 319. (a)(1) Each State, by itself or in combination with adjacent States, shall, after notice and opportunity for public comment, submit to the Administrator, within 18 months after the date of enactment of the Clean Water Act Amendments of 1983, a proposed nonpoint source pollution management program which shall—*

*(A) identify those waters within its boundaries which without additional action to control nonpoint sources of pollution cannot reasonably be expected to attain or maintain (i) applicable water quality standards, or (ii) the goals and requirements of the Act;*

*(B) designate categories or subcategories of nonpoint sources of pollutants or, where appropriate, particular nonpoint sources, that contribute significant pollutant loadings to the waters identified under subparagraph (A);*

*(C) identify best management practices which will be undertaken to reduce pollutant loadings resulting from each category, subcategory or particular nonpoint source designated under subparagraph (B);*

*(D) identify programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories and particular nonpoint sources designated under subparagraph (B);*

*(E) include a schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (D), and (ii) implementation of the best management practices identified in subparagraph (C) by the categories, subcategories, or particular nonpoint sources designated under subparagraph (B). Such schedule shall provide for utilization of the program implementation methods and implementation of best management practices at the earliest practicable date;*

*(F)(i) include a statement from the attorney general of such State or States (or the attorney for those State water pollution control agencies which have independent legal counsel) that the laws of such State or States, as the case may be, provide adequate authority to carry out the described program, or what additional*

*authorities would be necessary to do so, and (ii) if this statement identifies additional needed authorities, include a schedule and commitment by the State to seek such authorities as expeditiously as practicable; and*

*(G) include an identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with and further the purposes and objectives of the program prepared under this subsection. For the purposes of this paragraph, identification shall not be limited to the assistance programs or development projects subject to the Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.*

*(2) In developing the nonpoint source management program required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), and 305(b), and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to section 208(b), to the extent such elements are consistent with and fulfill the requirements of this section.*

*(3) In developing and implementing the management program described in this subsection, a State may make use of local agencies or organizations.*

*(b)(1) Within six months of the date of receipt of a proposed nonpoint source management program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's proposed management program meets the requirements of subsection (a)(1) of this section.*

*(2) If the Administrator determines that the proposed management program does not meet the requirements of subsection (a)(1) of this section, he shall within six months of receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional three months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.*

*(3) Pursuant to paragraphs (1) or (2) of this subsection, the Administrator shall approve those State management programs that he determines meet the requirements of subsection (a)(1) of this section.*

*(4) If the Administrator fails to approve the State management program pursuant to paragraph (1) of this subsection or fails to notify the State of necessary revisions pursuant to paragraph (2) of this subsection within six months of receipt of the State program, or if he fails to approve or disapprove the program pursuant to paragrah (2) of this subsection within three months of receipt of the revised program, the program shall be deemed to have been approved by the Administrator.*

*(c) If a State fails to submit a nonpoint source pollution management program that the Administrator determines meets the requirements of subsection (a)(1) of this section, the Administrator shall notify such State, and within 30 months after the date of enactment of the Clean Water Act Amendments of 1983, after consultation with appropriate Federal and State agencies and other interested persons, carry out the requirements of subsections (a)(1) (A) and (B) of this section for such State. Upon completion of this requirement, the Administrator shall report to Congress on his actions pursuant to this section.*

*(d)(1) The Administrator shall award grants, subject to such terms and conditions as the Administrator considers appropriate, to assist States in the implementation of management programs which have been approved pursuant to subsection (b) of this section. Such grants shall not exceed 75 per centum of the costs of implementing the program in any fiscal year and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this subsection.*

*(2)(A) Two-thirds of the funds appropriated in any fiscal year for grants under this section shall be made available for allotment to the several States in accordance with the following table:*

| State | Percentage allotment | State | Percentage allotment |
|---|---|---|---|
| Alabama | 1.56 | New Jersey | 1.62 |
| Alaska | .50 | New Mexico | 1.93 |
| Arizona | 1.95 | New York | 4.22 |
| Arkansas | 1.43 | North Carolina | 1.90 |
| California | 6.37 | North Dakota | 2.14 |
| Colorado | 2.19 | Ohio | 3.14 |
| Connecticut | .68 | Oklahoma | 2.05 |
| Delaware | .50 | Oregon | 1.75 |
| District of Columbia | .50 | Pennsylvania | 2.97 |
| Florida | 2.66 | Rhode Island | .50 |
| Georgia | 2.04 | South Carolina | 1.09 |
| Hawaii | .50 | South Dakota | 1.94 |
| Idaho | 1.20 | Tennessee | 1.50 |
| Illinois | 4.03 | Texas | 8.08 |
| Indiana | 2.07 | Utah | 1.36 |
| Iowa | 2.39 | Vermont | .50 |
| Kansas | 2.78 | Virginia | 1.60 |
| Kentucky | 1.32 | Washington | 1.58 |
| Louisiana | 1.56 | West Virginia | .60 |
| Maine | .55 | Wisconsin | 1.90 |
| Maryland | 1.03 | Wyoming | 1.39 |
| Massachusetts | 1.25 | Guam | .10 |
| Michigan | 2.67 | Northern Marianas | .10 |
| Minnesota | 2.43 | Pacific Trust Territories | .10 |
| Mississippi | 1.40 | Puerto Rico | .72 |
| Missouri | 2.44 | Samoa | .10 |
| Montana | 2.46 | Virgin Islands | .10 |
| Nebraska | 2.26 | | |
| Nevada | 1.78 | Total | 100.00 |
| New Hampshire | .50 | | |

*(B) One-third of the funds appropriated in any fiscal year for grants under this section shall be made available to the Administrator who shall make grants in response to applications from States if the*

*Administrator determines such grants are necessary and appropriate to assist such States in—*

*(i) controlling particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;*

*(ii) implementing innovative methods or practices for controlling nonpoint sources of pollution, including both regulatory or nonregulatory programs where the Administrator deems appropriate;*

*(iii) controlling interstate nonpoint source pollution problems; or,*

*(iv) providing financial assistance for implementation by an Indian tribe, within the reservation, of an approved management program: Provided, That any such Indian tribe shall be subject to all terms and conditions of this section applying to a State. Financial assistance to any one reservation under this clause shall not exceed one third of one percent of the total amount appropriated for grants for each year.*

*(3) The funds allotted to the States pursuant to paragraph (2)(A) of this subsection for a fiscal year shall remain available for obligation for the fiscal year for which appropriated. The amount of any such allotments not obligated by the end of such fiscal year and any unobligated funds remaining under paragraph (2)(B) of this subsection shall be reallotted by the Administrator for the next fiscal year on the basis of the table in paragraph (2)(A).*

*(4) States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.*

*(5) No grant shall be made to a State under this section unless the Administrator determines, on the basis of information provided by the State and from other relevant sources, that the State is implementing the program satisfactorily in terms of the requirements and objectives of this section.*

*(6) The Administrator may request such information, data, and reports as he may deem necessary to make the determination of continuing eligibility for grants under this section.*

*(7) For the purpose of this section, there are authorized to be appropriated, to remain available until expended, $70,000,000 for the fiscal year ending September 30, 1985, $100,000,000 for the fiscal year ending September 30, 1986, and $130,000,000 for the fiscal year ending September 30, 1987.*

*(e) Each State shall report to the Administrator on an annual basis concerning (1) its progress in meeting the schedule of milestones submitted pursuant to subsection (a)(1)(E) of this section, and (2) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.*

*(f) The Administrator shall—*

*(1) transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (a)(1)(G) for which individual assistance*

*applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than 60 days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program;*

*(2) collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (A) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (B) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution; and*

*(3) submit to the Congress, within 36 months of enactment of the Clean Water Act Amendments of 1983, a report which on the basis of information submitted by the States pursuant to subsections (a) and (e) of this section, and other information as appropriate:*

*(A) describes the management programs being implemented by the States by types and amount of affected waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;*

*(B) describes the experiences of the States in adhering to schedules and implementing best management practices;*

*(C) describes the amount and purpose of grants awarded pursuant to subsection (d) of this section;*

*(D) identifies, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the waters of the United States; and*

*(E) indicates what further actions need to be taken to attain and maintain in those waters (i) applicable water quality standards and (ii) the goals and requirements of the Act.*

○

II

Calendar No. 494

98TH CONGRESS
1ST SESSION

# S. 2006

[Report No. 98–282]

To amend the Clean Water Act to provide for a program for reduction of nonpoint sources of pollution.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 26 (legislative day, OCTOBER 24), 1983

Mr. STAFFORD, from the Committee on Environment and Public Works, reported the following original bill; which was read twice and placed on the calendar

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# A BILL

To amend the Clean Water Act to provide for a program for reduction of nonpoint sources of pollution.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SHORT TITLE

SECTION 1. This Act may be cited as the "Nonpoint Source Pollution Management Act of 1983".

### NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM

SEC. 2. Title III of the Clean Water Act is amended by adding at the end thereof the following new section:

"NONPOINT SOURCE POLLUTION MANAGEMENT PROGRAM

"SEC. 319. (a)(1) Each State, by itself or in combination with adjacent States, shall, after notice and opportunity for public comment, submit to the Administrator, within eighteen months after the date of enactment of the Clean Water Act Amendments of 1983, a proposed nonpoint source pollution management program which shall—

"(A) identify those waters within its boundaries which without additional action to control nonpoint sources of pollution cannot reasonably be expected to attain or maintain (i) applicable water quality standards, or (ii) the goals and requirements of the Act;

"(B) designate categories or subcategories of nonpoint sources of pollutants or, where appropriate, particular nonpoint sources, that contribute significant pollution loadings to the waters identified under subparagraph (A);

"(C) identify best management practices which will be undertaken to reduce pollutant loadings resulting from each category, subcategory or particular nonpoint source designated under subparagraph (B);

"(D) identify programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories and particular nonpoint sources designated under subparagraph (B);

"(E) include a schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (D), and (ii) implementation of the best management practices identified in subparagraph (C) by the categories, subcategories, or particular nonprofit sources designated under subparagraph (B). Such schedule shall provide for utilization of the program implementation methods and implementation of best management practices at the earliest practicable date;

"(F)(i) include a statement from the attorney general of such State or States (for the attorney for those State water pollution control agencies which have independent legal counsel) that the laws of such State or States, as the case may be, provide adequate authority to carry out the described program, or what additional authorities would be necessary to do so, and (ii) if this statement identifies additional needed authorities, include a schedule and commitment by the State to seek such authorities as expeditiously as practicable; and

"(G) include an identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with and further the purposes and objectives of the program prepared under this subsection. For the purposes of this paragraph, identification shall not be limited to the assistance programs or development projects subject to the Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

"(2) In developing the nonpoint source management program required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), and 305(b), and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to section 208(b), to the extent such elements are consistent with and fulfill the requirements of this section.

"(3) In developing and implementing the management program described in this subsection, a State may make use of local agencies or organizations.

"(b)(1) Within six months of the date of receipt of a proposed nonpoint source management program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's proposed management program meets the requirements of subsection (a)(1) of this section.

"(2) If the Administrator determines that the proposed management program does not meet the requirements of subsection (a)(1) of this section, he shall within six months of receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional three months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.

"(3) Pursuant to paragraph (1) or (2) of this subsection, the Administrator shall approve those State management programs that he determines meet the requirements of subsection (a)(1) of this section.

"(4) If the Administrator fails to approve the State management program pursuant to paragraph (1) of this subsection or fails to notify the State of necessary revisions pursuant to paragraph (2) of this subsection within six months of receipt of the State program, or if he fails to approve or disapprove the program pursuant to paragraph (2) of this subsection within three months of receipt of the revised program, the program shall be deemed to have been approved by the Administrator.

"(c) If a State fails to submit a nonpoint source pollution management program that the Administrator determines meets the requirements of subsection (a)(1) of this section, the Administrator shall notify such State, and within thirty months after the date of enactment of the Clean Water Act Amendments of 1983, after consultation with appropriate Federal and State agencies and other interested persons, carry out the requirements of subsections (a)(1) (A) and (B) of this section for such State. Upon completion of this requirement, the Administrator shall report to Congress on his actions pursuant to this section.

"(d)(1) The Administrator shall award grants, subject to such terms and conditions as the Administrator considers appropriate, to assist States in the implementation of management programs which have been approved pursuant to subsection (b) of this section. Such grants shall not exceed 75 per centum of the costs of implementing the program in any fiscal year and shall be made on condition that non-Federal sources provide at least 25 per centum of the costs that receive funding under this subsection.

"(2)(A) Two-thirds of the funds appropriated in any fiscal year for grants under this section shall be made available for allotment to the several States in accordance with the following table:

| *State* | *Percentage allotment* |
|---|---|
| Alabama | 1.56 |
| Alaska | .50 |
| Arizona | 1.95 |
| Arkansas | 1.43 |
| California | 6.37 |
| Colorado | 2.19 |
| Connecticut | .68 |
| Delaware | .50 |
| District of Columbia | .50 |
| Florida | 2.66 |
| Georgia | 2.04 |
| Hawaii | .50 |
| Idaho | 1.20 |
| Illinois | 4.03 |
| Indiana | 2.07 |
| Iowa | 2.39 |
| Kansas | 2.78 |
| Kentucky | 1.32 |
| Louisiana | 1.56 |
| Maine | .55 |
| Maryland | 1.03 |
| Massachusetts | 1.25 |
| Michigan | 2.67 |
| Minnesota | 2.43 |
| Mississippi | 1.40 |
| Missouri | 2.44 |
| Montana | 2.46 |
| Nebraska | 2.26 |
| Nevada | 1.78 |
| New Hampshire | .50 |
| New Jersey | 1.62 |
| New Mexico | 1.93 |
| New York | 4.22 |
| North Carolina | 1.90 |
| North Dakota | 2.14 |
| Ohio | 3.14 |
| Oklahoma | 2.05 |
| Oregon | 1.75 |
| Pennsylvania | 2.97 |
| Rhode Island | .50 |

| | |
|---|---|
| South Carolina | 1.09 |
| South Dakota | 1.94 |
| Tennessee | 1.50 |
| Texas | 8.08 |
| Utah | 1.36 |
| Vermont | .50 |
| Virginia | 1.60 |
| Washington | 1.58 |
| West Virginia | .60 |
| Wisconsin | 1.90 |
| Wyoming | 1.39 |
| Guam | .10 |
| Northern Marianas | .10 |
| Pacific Trust Territories | .10 |
| Puerto Rico | .72 |
| Samoa | .10 |
| Virgin Islands | .10 |
| TOTAL | 100.00 |

"(B) One-third of the funds appropriated in any fiscal year for grants under this section shall be made available to the Administrator who shall make grants in response to applications from States if the Administrator determines such grants are necessary and appropriate to assist such States in—

"(i) controlling particularly difficult or serious nonpoint source pollution problems, including but not limited to, problems resulting from mining activities;

"(ii) implementing innovative methods or practices for controlling nonpoint sources of pollution, including both regulatory or nonregulatory programs where the Administrator deems appropriate;

"(iii) controlling interstate nonpoint source pollution problems; or, "(iv) providing financial assistance for implementation by an Indian tribe, within the reservation, of an approved management program: *Provided,* That any such Indian tribe shall be subject to all terms and conditions of this section applying to a State. Financial assistance to any one reservation under this clause shall not exceed one-third of 1 per centum of the total amount appropriated for grants for each year.

"(3) The funds allotted to the States pursuant to paragraph (2)(A) of this subsection for a fiscal year shall remain available for obligation for the fiscal year for which appropriated. The amount of any such allotments not obligated by the end of such fiscal year and any unobligated funds remaining under paragraph (2)(B) of this subsection shall be reallotted by the Administrator for the next fiscal year on the basis of the table in paragraph (2)(A).

"(4) States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.

"(5) No grant shall be made to a State under this section unless the Administrator determines, on the basis of information provided by the State and from other relevant sources, that the State is implementing the program satisfactorily in terms of the requirements and objectives of this section.

"(6) The Administrator may request such information, data, and reports as he may deem necessary to make the determination of continuing eligibility for grants under this section.

"(7) For the purpose of this section, there are authorized to be appropriated, to remain available until expended, $70,000,000 for the fiscal year ending September 30, 1985, $100,000,000 for the fiscal year ending September 30, 1986, and $130,000,000 for the fiscal year ending September 30, 1987.

"(e) Each State shall report to the Administrator on an annual basis concerning (1) its progress in meeting the schedule of milestones submitted pursuant to subsection (a)(1)(E) of this section, and (2) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

"(f) The Administrator shall—

"(1) transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (a)(1)(G) for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program;

"(2) collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (A) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (B) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution; and

"(3) submit to the Congress, within thirty six months of enactment of the Clean Water Act Amendments of 1983, a report which on the basis of information submitted by the States pursuant to subsections (a) and (e) of this section, and other information as appropriate:

"(A) describes the management programs being implemented by the States by types and amount of affected waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;

"(B) describes the experiences of the States in adhering to schedules and implementing best management practices;

"(C) describes the amount and purpose of grants awarded pursuant to subsection (d) of this section;

"(D) identifies, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the waters of the United States; and

"(E) indicates what further actions need to be taken to attain and maintain in those waters (i) applicable water quality standards and (ii) the goals and requirements of the Act.".

AGREEMENTS AMONG FEDERAL AGENCIES

SEC. 3. Section 304(k)(1) of the Clean Water Act is amended by inserting after the word "Act" the following: "and nonpoint source pollution management programs approved under section 319 of this Act.".

# CLEAN WATER ACT AMENDMENTS OF 1982

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# HEARINGS

BEFORE THE

## SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

OF THE

## COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

## S. 777

A BILL TO AMEND THE FEDERAL WATER POLLUTION CONTROL ACT TO RESTRICT THE JURISDICTION OF THE UNITED STATES OVER THE DISCHARGE OF DREDGED OR FILL MATERIAL TO THOSE DISCHARGES WHICH ARE INTO NAVIGABLE WATERS, AND FOR OTHER PURPOSES

## S. 2652

A BILL TO REVISE AND EXTEND CERTAIN PROVISIONS OF THE FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED, FOR FIVE YEARS, AND FOR OTHER PURPOSES

JULY 21, 22, 28, AND 29, 1982

SERIAL NO. 97-H58

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# CLEAN WATER ACT AMENDMENTS OF 1982

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WEDNESDAY, JULY 21, 1982

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION,
*Washington, D.C.*

The subcommittee met, at 10:07 a.m., in room 4200, Dirksen Senate Office Building, Hon. John H. Chafee (chairman) presiding.

Present: Senators Chafee, Gorton, Randolph, and Mitchell.

## OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Good morning.

This morning we are pleased to welcome to the subcommittee Dr. John Hernandez, the Deputy Administrator of the EPA, as we begin 4 days of hearings on amendments to the Clean Water Act.

These hearings were actually begun on February 5, when we heard from Dr. Hernandez on the issues that the agency was focusing on in its amendments. It was my contention at the time, and I have mentioned it several times, that the Clean Water Act is not in need of major changes. It is fundamentally sound. Nothing I have seen or heard since February has changed my opinion. Any changes in the act would slow down the job that none of us wants to occur.

When I first became a member of the subcommittee in 1977, a major item of consideration was the so-called midcourse correction in the Clean Water Act. Changes were made at that time to make the act work smoother and also to focus our future attention on controlling toxic pollutants. A midcourse correction, in other words, was made at that time. In my judgment there is no need to make another.

In preparing its proposals, one of the items that the EPA carefully reviewed for inclusion was a BAT waiver. This is also now somewhat euphemistically referred to as an environmental modification. A great deal of space in the testimony that Dr. Hernandez has submitted today is devoted to explaining the concept of the BAT waiver. Two types of waivers, predictive and nonpredictive, are discussed.

But whatever they are, it seems to me that a BAT waiver turns the Clean Water Act into an aquatic guessing game. To acknowledge that a waiver is an acceptable regulatory tool is to take a major step backward in the goals of the act. A water quality-based approach to pollution control failed before 1972 and will fail again.

**Note.--Additional material was supplied by Administration witnesses to the Subcommittee. Some of that material has been omitted from this legislative history and may be found in the record of the hearing.**

Now although that concept is not included in the legislation before us today, it is clear from the testimony submitted that EPA intends to pursue and perhaps to suggest a BAT waiver sometime in the future. At a time when the agency's resources are diminishing, I expect that EPA would try to marshal these resources to get on with the job at hand rather than resurrect a policy that Congress judged to be a failure a decade ago. If a BAT waiver is suggested, I hope there is new information to support it.

Additionally, I have concerns about EPA's dependence on the notion of designated use achievement and also on the wide discretion sought in the pretreatment program. However, we will wait until the conclusion of Dr. Hernandez's testimony before pursuing these issues.

It seems to me that, given the concerns in Dr. Hernandez's testimony today, EPA is sending an important and positive signal to all of those concerned with stability in our environmental laws. For example, a recommendation for a 5-year reauthorization is a positive sign all of us want to get on with the job of continuing the cleanup of our Nation's waters.

Over the next 4 days, the subcommittee will be discussing some very complex issues—for example, BAT and pretreatment. We are fortunate to have Dr. Hernandez to work with us as we move through this process. Dr. Hernandez was an inestimable help in the construction grants bill. He was truly indispensable then, and we look forward to working closely with you, doctor, as we move these amendments through Congress.

It is my hope that we can get legislation well on its way to enactment prior to our recess for Labor Day, the end of August.

With that in mind, we welcome you, Dr. Hernandez, as you proceed. Before you start, I wonder if you could identify those with you at the table.

## STATEMENT OF JOHN HERNANDEZ, DEPUTY ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY FREDERIC EIDSNESS, ASSISTANT ADMINISTRATOR FOR WATER, EPA; DOUG FARBROTHER, PRINCIPAL DIRECTOR FOR DEPUTY ASSISTANT SECRETARY OF FACILITIES, ENVIRONMENT AND ECONOMIC ADJUSTMENT, DEPARTMENT OF DEFENSE; CAROL DINKINS, ASSISTANT ATTORNEY GENERAL, LAND AND NATURAL RESOURCES DIVISION, DEPARTMENT OF JUSTICE; EPHRAIM KING, ATTORNEY/ADVISER, OFFICE OF LEGISLATION, EPA; AND PETER PEREZ, ASSISTANT FOR POLICY TO THE ASSISTANT ADMINISTRATOR FOR WATER, EPA

Dr. HERNANDEZ. Yes; good morning, Mr. Chairman, I would be pleased to do that.

On my left is Carol Dinkins, Assistant Attorney General in the Land and Natural Resources Division, Department of Justice. On my right I have Frederic Eidsness, the Assistant Administrator for Water at EPA, and Doug Farbrother of the Department of Defense.

I would also like at this time to introduce two people from the EPA staff who were principally responsible for writing these amendments and doing much of the hard work. I know it is a little atypical to do that kind of thing, but this is the kind of professional staff that is there. I have Ephraim King from our Legislative Office. Ephraim, stand up.

Senator CHAFEE. Take a bow, Ephraim.

Dr. HERNANDEZ. And Peter Perez from the water program. And these two people know all the details.

I will proceed then with my testimony.

It is a pleasure to be here this morning, Mr. Chairman, to discuss the administration's legislative proposals for reauthorization of the Clean Water Act.

Last year at this time, I had the privilege of working closely with this subcommittee in developing major reforms to the construction grants program, as you have noted. More recently, I have had the opportunity to meet with members of the subcommittee and its highly professional staff to discuss reauthorization in general, and to explore the different perspectives that I feel certain will be brought to bear on this process. From working with you, Mr. Chairman, and the other members of this subcommittee, I have developed the highest regard and personal respect for the experience, expertise and commitment that you and your staff bring to consideration of the Clean Water Act.

Over the past decade, the requirements of the Clean Water Act have been tested and refined, challenged, and improved, analyzed and yet again revised. The purpose of this process has been to develop the most effective approach to water pollution control possible. The amendments of the last 10 years have illustrated clearly that the Clean Water Act as we know it today is neither a static piece of legislation nor a "one-time perfect fix." Rather, these ongoing developments and modifications reflect continuous efforts to address problems as they arise, discard impractical and unworkable approaches, and adopt new strategies where old ones have proven ineffective and unnecessary. Today, in considering reauthorization of the Clean Water Act, we have the opportunity to continue this process, and to improve and build upon what has already been accomplished.

In developing the specific proposals that are part of our legislative recommendation, we met with a wide range of individuals and groups over the past year. These meetings included representatives of State and local governments, public interest and environmental groups, Members of Congress, and representatives of industry. We went to these meetings to listen, and we learned a great deal. There is a broad consensus that the act is fundamentally sound, that substantial improvements in water pollution control have occurred, and that this progress must and will continue. But there is also recognition that we are faced with some urgent problems that demand our attention. The objective of our proposals is to continue the many positive aspects of the Clean Water Act that clearly have worked in the past, while at the same time address those widely recognized areas where problems have arisen.

This morning I would like to leave as much time as possible for questions and discussion. With your permission, Mr. Chairman, I will briefly summarize our recommendations and submit a longer, more technical statement for the record.

Senator CHAFEE. Yes, doctor, we will put that in the record.

Dr. **Hernandez**. The administration's proposals are premised on a commitment to the act's fundamental objective of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters. Our recommendations are intended to support this objective by improving the act's operation and its implementation, not changing its direction. We do not question the basic construction of the act. EPA believes that the dual approach of the general application of technology-based treatment requirements and site-specific water quality based effluent limitations has resulted in substantial progress, and that progress must continue. A major part of the progress is due directly to the working partnership between the Federal, State and local governments in addressing water pollution problems. This partnership must continue and be strengthened as well.

I believe that one of the most important features of the administration's legislative recommendations is the provision for a 5-year reauthorization. This will send a strong signal to both the public and industry alike that this Congress and this administration are committed to sustained environmental progress. This will also provide needed certainty and stability for the regulated community. Admittedly, the reauthorization period applies only to the funding sections of the act and the substantive provisions of the law can be reviewed and modified by the Congress as the need arises. Nevertheless, I strongly recommend that we join in a long-range commitment to the funding and schedules we are recommending.

Beyond a 5-year reauthorization request, our proposed modifications embody four themes. The first such theme centers on the need for more time to implement effectively certain portions of the law. These include extension of unrealistic promulgation deadlines faced by the Agency, modification of industrial compliance deadlines to conform with promulgation of BAT and BCT effluent guidelines, and expansion of the period in which publicly owned treatment works may apply for additional time extensions. We believe that all of our proposed changes reflect reality—facts and circumstances that simply cannot be overlooked.

Increased administrative efficiency is the goal of other proposed modifications. Many industries and municipal discharges have met their discharge limits and maintain an excellent compliance record. Considering this and the tremendous permit reissuance workload at the Federal and State level, we believe it makes sense to provide dischargers with permits of up to 10 years rather than the existing 5-year period. To provide for a stronger and more efficient enforcement program EPA is also asking that the administrative civil penalty and criminal sanction provisions of the Clean Water Act be strengthened.

Greater emphasis on the role of States and local governments is the third theme of our amendments. An effective working partnership with State and local governments is essential to the successful implementation of the Clean Water Act. These amendments allow the States which have not yet assumed authority for an entire permit program to administer portions of it while moving toward future assumption of the entire responsibility when this is possible. In addition, greater State and local responsibility for the pretreatment program is provided. This latter proposal is based on the proven ability of many State and local agencies to handle their water pollution problems and recognizes the principle that those closest to the problem understand it better and can best contribute to its solution.

A final theme reflected in these proposed amendments is the need for clarification in the present statute. These proposals relate to the regulation of dams, munitions, and Federal facilities. We believe that recent judicial decisions on the regulation of dams need to be corrected. In addition, expansion of Federal facility exemptions is requested.

One issue that has been widely discussed and yet is not addressed in these proposals is the concept of exemptions from BAT technology-based controls. As I testified in February, EPA strongly supports the need to identify an appropriate method to avoid "treatment for treatment's sake." The Agency did not recommend a BAT waiver at this time for several reasons. Chief among them is EPA's agreement with this committee's position that the act is fundamentally sound and that modifications should not be made unless compelling evidence exists that the current program is not working and that there is substantial agreement on a modified approach. With most of the BAT guidelines not yet in place, it is difficult to determine the extent and type of waiver that eventually may be recommended. Nor is there agreement on how a BAT waiver program should be constructed until additional guidelines are in place. It is for these reasons that a BAT waiver program was not put forth by the administration.

The administration's legislative recommendations represent a solid, constructive approach to reauthorization of the Clean Water Act. Our proposed changes reflect many months of careful and thoughtful analysis. They are based on a detailed and comprehensive evaluation of the effectiveness of our national strategy for water pollution control. I strongly believe that, if enacted, they will strengthen not only the Agency's ability, but also that of the States and local governments to address more effectively our Nation's water pollution problems.

In conclusion, let me say that we welcome debate on our recommendations and pledge to work with and assist you in any way possible in making the Clean Water Act even better than it presently is.

This concludes my statement, Mr. Chairman, and we are pleased to be here for questions.

Senator **Chafee**. Thank you very much, Dr. Hernandez.

We note that Senator Mitchell and Senator Gorton have arrived since we started. Senator Mitchell, do you have an opening statement you would like to give?

## OPENING STATEMENT OF HON. GEORGE J. MITCHELL, U.S. SENATOR FROM THE STATE OF MAINE

Senator **Mitchell**. I do, Mr. Chairman, and I thank you. My statement is brief, so I will accept your invitation to make it.

I am pleased, Mr. Chairman, that you have scheduled these hearings to review the Clean Water Act.

The 1972 Clean Water Act set ambitious goals for this country "to restore and maintain the chemical, physical and biological integrity of the Nation's waters." We have in fact made substantial progress in achieving these goals in the past decade. It is therefore appropriate to review that progress and to assess after that decade of experience the workability of the Clean Water Act.

The quality of Maine's waters is testimony this law has worked. Seventy-two percent of Maine's 2,349 miles of major streams meet the goal of the law that water be fishable and swimmable by 1983. Nearly 88 percent of those major streams will meet or exceed that criterion by 1983.

Once extinct salmon have returned to the Penobscot River which had been polluted so badly that its total waste level equaled the combined sewage of Maine, New Hampshire, Vermont, and Rhode Island. These improvements are more than cosmetic, they are critically important to the economy of the State of Maine, which depends heavily on the tourist and fishing industries. And Maine is not alone in that respect.

So I approach these hearings with the conviction we ought to continue the course we set as a Nation in 1972. If there are minor adjustments required, the Congress should consider it. However, I do not believe that any major changes to this law are necessary or desirable.

In my view, those who seek to change the law carry the heavy burden of proving that the changes are necessary and that they will not defer or hinder or obstruct achievement of the fundamental goals of this landmark law.

I thank you, Mr. Chairman. I thank Dr. Hernandez and look foward to further testimony.

Senator CHAFEE. Thank you, Senator Mitchell. You have been very faithful and supportive of the efforts of this subcommittee in connection with not only the Clean Water Act but all the other pieces of legislation we have considered. We are grateful for that fine statement.

Senator Gorton?

Senator GORTON. Mr. Chairman, I don't have a formal opening statement. I am glad we have begun this process. I am glad we have heard such an affirmative and balanced presentation from Dr. Hernandez. I agree entirely with Senator Mitchell that we do not need any drastic overhaul. We do need to examine the way in which the act has worked and been implemented and to strengthen it where necessary and make technical corrections where they are appropriate.

Senator CHAFEE. Thank you, Senator Gorton. Again, likewise, you have been a very positive and helpful member of this subcommittee and attentive to the various matters we have considered, and I count on your usual fine support as we move through this Clean Water Act.

Dr. Hernandez, let's get a little into the BAT waiver and where we stand there. Could you describe for the committee what the NRDC consent decree was?

Dr. HERNANDEZ. As best I can.

The original act required EPA to set guidelines for best available technology for toxic materials. EPA did not by 1975, and a suit was entered against the Agency approximately at that time. This was settled in court in a consent decree, and I think the date was around 1976. Those 1976 consent decree provisions were incorporated into the 1977 amendments.

As you know, the basic part of it required that EPA adopt water quality criteria for 65 toxic pollutants and that we set effluent limitations to control those materials. The effluent limitations for those 65 pollutants were to apply to the 34 industries which were listed in the committee report. This was essentially what the NRDC consent decree did, although there were other parts of it that had a number of obligations they requested us to do. We have gone down the line on that, falling behind schedule progressively.

Under the 1977 amendments, we were to have had those BAT rules in place by July 1, 1980. We were not able to accomplish that. We are now under a court decree to finish those up. All of the rules that have been proposed should become final in the next 180 days, and all that we have not proposed will be within the 180 days and become final 180 days after that. So roughly in this next year in the consent decree we are required to come up with essentially all BAT guidelines for all of the 34 industries, or a large part of them.

Senator CHAFEE. It is my understanding, in other words, by July 1983 for the 34 industries you have got to have the BAT guidelines complete.

Dr. HERNANDEZ. I think it may be a smaller list than the 34, but approximately. I think it's 24 plus 10 we have.

Senator CHAFEE. And three industries you have completed?

Dr. HERNANDEZ. That is right, sir.

Senator CHAFEE. Do you think you will be able to meet that deadline?

Dr. HERNANDEZ. Yes, sir. We have put additional resources in for that purpose. It will be very difficult. Everything will have to work well. We will have to truncate review periods within the Agency. It certainly will be one of those great trials and a great effort on our part, but we have told the court that we will do it and we will make every effort to do that. I think as we go along and find problems we will go back to the court, but it is certainly our intention right now to make every effort to do that.

Senator CHAFEE. You have asked for an extension of the compliance deadline until 1988. Give us your rationale on that.

Dr. HERNANDEZ. Yes, sir. It is clear that industry cannot meet BAT rules that we haven't promulgated yet, and the date industry must do this by July 1, 1984. If we don't get the last of the guidelines out for a year from now, it is clear that industry can't meet them by that period of time. So it is clear we must extend the dates.

Senator CHAFEE. I want to make it clear to industry, as we have in private meetings, that this is recognized. We recognized, as a committee, there is no way they can meet these compliance deadlines, and an extension has to be granted. The question is how long—1987? 1988? When should that be?

Dr. HERNANDEZ. In our amendments we selected July 1, 1988, to parallel the date set by the Congress this last year for the date by which municipalities must achieve secondary achievements, and that date was July 1, 1988. Using that as a rationale, it would be evenhanded of us to suggest the same date. I think if you said when could industry comply we might get out the last of these guidelines let's say, sometime in 1984, then industry could be in compliance 3 years or 42 months afterward—that does take you into late 1987 or 1988. That is our rationale.

Mr. EIDSNESS. Senator Chafee, if I could make a point of clarification. In the written testimony on page 33 there is a table that has the dates we have submitted to the court that basically parallel what Dr. Hernandez has just summarized for you. I would like to emphasize two things.

One that is these dates are based upon a scenario of rulemaking that assumes everything will go right. In all candor, the chance exists that something may go wrong and that some of these dates may slip. But we are committed to meet these dates to the extent we possibly can, and we have taken a number of initiatives to increase resources in this area to be sure we have adequate resources for that purpose.

The second point I would like to make is that it is not our intent to put industry on a compliance schedule that will get them into an 1988 compliance mode. Our intent is to write permits based upon the promulgated best available technology guidelines when they are promulgated. So if an industry such as the steel industry, which we have just recently promulgated final rules on, their permits are now being written and they will have to be in compliance 2 to 3 years from the dates the permits are issued. So we will in fact be achieving best available technology as close to the time as the rules are promulgated as is physically possible for industries to construct the needed facilities and control technologies.

Senator CHAFEE. Am I correct in believing you have told the court that the compliance will be 3 years after the issuance of the regulations?

Mr. EIDSNESS. I think it will vary according to the complexity of the industrial facility. In some cases it could be as soon as 2 years, in other cases it would be 3 years.

Senator CHAFEE. My question is if you are going to have your regulations all out by July 1, 1983, and you add 3 years to that, that gets you to 1986, and yet you are asking for 1988 as the deadline. Why?

Dr. HERNANDEZ. Well, when we started that process, we still were in the courts discussing with them and pleading we should be given a longer period of time than this 360-day period that we have ended up with. And as Mr. Eidsness has indicated, we are uneasy about doing that. If it is possible, we will be there. But when initially we had asked for a 1984 date for finalizing the last of the BAT rules, if you are looking at something like 1 year to incorporate the BAT standards into permits and allow 36 to 42 months for the most difficult industry to comply with the standards then you are in that 1988 timeframe, 1987–88 timeframe.

Senator CHAFEE. You submitted suggestions. Whether that is right or wrong we don't know. But it does seem to me we all want to get on with the job. People don't get things done unless there are deadlines. If you take 3 years plus 1983, that gets you up to 1986. You are queasy about having your regulations out by then.

Allow for a year's slippage and that gets you up to 1987. And my question is suppose this committee changed your compliance date from 1988 to 1987, what would be your reaction?

Dr. HERNANDEZ. I think there is some rationale for doing that. Another approach would be to use the date these become final, and then allow a certain number of months for compliance. The period people have talked about is 36 or 42 months as being the kind of thing that is in the realm of what is needed and perhaps appropriate.

Senator CHAFEE. My time is up. Senator Mitchell?

Mr. EIDSNESS. Excuse me, Senator, I think this is worthy of clarification. I was just reviewing the timetable that describes the schedule we have submitted to the court. Noting on page 33, table 4, of the written testimony, it shows for four industry categories—inorganic chemicals [phase II], nonferrous metals [phase II], nonferrous metal forming, and plastics molding and forming—a completion date of 6/84 for final promulgation.

One thing we should all, I hope, agree on when EPA truncates its internal development process to meet tight schedules such as these, we should be certain we are at the same time promulgating rules which are legally, technically, and economically defensible. So that is one reason why some of these dates we have in here suggest a later than a 1-year completion date from now for these other industries. So when you add the 3 years to 1984 you are getting close to 1988.

Senator CHAFEE. Thank you, Mr. Eidsness.

Senator Mitchell?

Senator MITCHELL. Thank you, Mr. Chairman.

Dr. Hernandez, you have stated very emphatically EPA's commitment to the fundamental objectives of the act, and you quoted that, as I did "to restore and maintain the chemical, physical and biological integrity of the Nation's water." In the act, the very first sentence following that reads, "It is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985." Does the EPA share a continued commitment to that goal?

Dr. HERNANDEZ. On January 18 of this past year the Administrator wrote a letter to all Members of Congress and Governors of all the States indicating the issues that we thought might arise in the reauthorization of the Clean Water Act. One of the issues that she discussed in her letter was the goals of the Act, and specifically the two goals, the fishable/swimmable goal and the so-called zero discharge goal that you have quoted. As to whether this goal should be a binding one, I think the answer is no, because what you have is the problem of us being able to measure more and more carefully every year to find out that things are present in such trace quantities that if you take zero in some kind of an absolute and scientific sense we will never get to zero on any kind of discharge. If we said we won't have any kinds of discharges into water bodies at all and we will dispose of all this material, you end up with the paradox of having to dispose on the land or into the air. There is no way to do this in our life. We are stuck with all the wastes we generate. Some of them we can use. However, many of them are not reusable or recyclable and they end up becoming part of our discharges that go into our air, into our streams and oceans.

To limit those is certainly a goal. To control these discharges so that we have fishable/swimmable streams is a goal that we would support. But zero discharge is not scientifically attainable in an absolute sense.

I hate to go on so long on this, but let me just pursue this 1 more minute with you.

Senator MITCHELL. Please take your time. It is an important subject and I think you should take as much time as you want.

Dr. HERNANDEZ. I guess I count myself as an old timer in this business. When we started talking about what is achievable in terms of water pollution back in the 1950's and 1960's we talked about removing suspended solids, about removing biochemical oxygen demand in water, about removing things that cause turbidity which hinders high quality fish life in streams. We said by and large we can remove all these things, these are treatable. We can get to zero on these organics that exercise an oxygen demand, but many of the other organics remain in place. Many of these affect biological life and they are in trace quantities. Today we can measure those things and identify them and we will never get to zero.

Senator MITCHELL. Well, if you do not continue to share the commitment expressed in the 1972 act, do you propose any formulation to reflect the extent of your present commitment?

Dr. HERNANDEZ. I think what we have said is that if you take the no discharge goal in that kind of general way of what was America trying to accomplish, and that is to remove those pollutants that have an impact on stream life, we are going to do that. If you take it in a more literal sense, then in that narrowest definition of removing all materials out of water, it is an indefensible argument and one we can't support.

What we do believe is that it, like all kinds of goals, all of our national acts have goals associated with them, full employment goals, that people who put money into Federal banks will be fully insured, yet we know occasionally we don't have full employment—is a target, and in a logical kind of way of where we are going, and I think in that sense it is a good idea.

Senator MITCHELL. Do leave it in?

Dr. HERNANDEZ. Absolutely, I wouldn't change it. I think maintaining it as a goal, as an objective in that general sense that we are talking about, to remove those things that have some kind of adverse effect on stream life, on human life, that we can identify, we should try to remove those things and control them.

Senator MITCHELL. I will come back.

Senator CHAFEE. We will have another round. We have only a total of three witnesses this morning and I think this is one day where we can explore these matters thoroughly and go around until everybody is satisfied. Why don't you proceed, Senator Gorton.

Senator GORTON. Perhaps my question will be the next question that Senator Mitchell would have asked. That is very easy to describe in a lenghty statement such as this, but how do you propose to make that distinction in statutory language?

Dr. HERNANDEZ. Well, I think it is in there now, in a way. When you look at what are the operational pieces, they are that EPA develops water quality criteria, which we have, for toxic pollutants and many others. These criteria become the framework for the State water quality standards, and the States have identified a particular use or uses. Typically, there are multiple uses of a reach of a river, and States take a look at our criteria, and then, using our criteria, identify those stream standards that must be attained. And because that is how you determine whether we should endeavor to remove waste from the stream, we should retain those water quality standards. So I think the act is workable. The act is whole and it is intact. I don't think anything need be done in that sense.

Senator GORTON. Let me go back to one of the questions which Senator Chafee asked. You have a specific 1988 deadline. You spoke of an alternative in which compliance deadlines would be a function of when EPA itself finishes its own work and sets standards. Which of those two do you consider to be more desirable? Why isn't the latter a part of your bill rather than a date which may or may not be realistic?

Dr. HERNANDEZ. I think that wherever we can give people certainty they are much more comfortable. When you say some individual is going to work with your company, with your municipality in writing a permit, and based on that permit you must do this act at some future time, there is always that feeling of negotiability, of not being even-handed, of it not being equitable to all those impacted. To avoid that, because human beings are human beings, to provide some kind of certainty, we have gone to the approach of providing a specific date in here.

Senator GORTON. To the extent we were to go to the approach which was date-specific only in the sense that it was a given number of months after a standard was promulgated, would the same number of months be appropriate for every standard or will some be more easier to achieve than others?

Dr. HERNANDEZ. I think that clearly some industries can achieve things within 36 months, others require a shorter period of time.

Senator GORTON. I am not speaking so much of industries as of the removal of control or particular kinds of pollutants.

Dr. HERNANDEZ. What happens is that typically they will go into a construction program where they will build units that are capable of doing multiple activities. And I think a good example of this is the one in the steel industry, where we wrote their rules for BAT as well as final BPT rules. Some of the steel industry is going to have to build some new facilities to meet the BPT rule. However, they are not going to build first for a BPT and then a BAT rule. It will be one treatment facility that will accomplish the whole thing. So they will accomplish it as a unit. So it is the unit date that is important rather than the component pieces.

Senator GORTON. Mr. Chairman, thank you.

Senator CHAFEE. Dr. Hernandez, in response to Senator Gorton's question you remarked a necessity for certainty in dealing with industry, that industry wants to know what is going to happen, and you question the fact the lack of universality raises problems. Now it seems to me that gets to the very heart of the BAT waiver. In your long statement you haven't ruled out absolutely the BAT waiver approach. Yet doesn't that raise every kind of problem that you have documented as being a difficulty in response to Senator Gorton's question?

Dr. **Hernandez**. I think that is an excellent point and one that we have answered in the past by saying there are possibilities for exemptions under the act currently, and we said we are willing to accept that approach, that we have to go on down the line putting things into effect and allowing people to apply for certain kinds of exemptions. I think there are about four sections of the act that already allow some kind of exemption process. There are none for BAT toxics rules today.

It is premature today to try to provide a BAT exemption rule. If you did it in a timely fashion, if industry came forward with the right kind of information and the debate takes place in the Congress to decide whether it is needed that would be constructive and appropriate. Today I don't know whether we can say here's how many cases it is needed in, here's how many cases there is treatment for treatment's sake. I think if we did it in a timely fashion we wouldn't run into that problem of leaving things ambiguous and unknown.

Senator **Chafee**. You keep talking about treatment for treatment's sake as somehow under this act that is possible. But BAT is aimed at toxics, and when you are treating for toxics and attempting to remove toxics, I don't fall for the rule that you are just doing it for treatment's sake.

Dr. **Hernandez**. What happens is we have to write nationally applicable guidelines. They are applicable not to a specific industry but to all the industries in that class whether or not they have absolutely identical processes and regardless of the kinds of receiving waters they go into. In order to do this we have to protect for those cases where we find certain kinds of toxics going out into certain kinds of streams. In order to make sure we provide protection, we set those treatment technologies to remove those materials. Now when you then come back at some other plant that is slightly different in process, that has a different discharge regime, may not have exactly the same kind of flow and it may discharge into a receiving water where there is no impact on that receiving water for that material, then in that case we are providing treatment without any benefits to society, at a significant cost. We believe we should allow people to make a case and apply for some kind of a waiver.

We have done that with municipalities, and we didn't say whether or not the municipality had any industrial discharge or not and we allowed them to discharge into oceans after some kind of preliminary treatment provided there is no adverse impact on the ocean out there where the outfall is. We have had a lot of experience with that process and we feel that if an industry could make a case someplace down the line and we have an appropriate set of rules, which we are not proposing to you today, that would be a good way to approach this question. We are leaving this for one of the things of future discussion.

Senator **Chafee**. Well, let's discuss this a little more. It seems to me you are moving into a water quality argument here. You talk about the receiving stream. Some receiving streams, you suggest it would be all right for them to take on toxics. Is that what you are saying?

Dr. HERNANDEZ. Well, I think these are going to be quite limited, where someone can prove that there are no adverse consequences and that, therefore, they don't have to provide this particular kind of control. We haven't formalized yet what we are looking at in terms of controls, and that is one of the reasons we haven't come to you with a request at this time.

Senator CHAFEE. Well, the whole objective of the efforts we are taking here is, as you have said in response to Senator Mitchell's questions, is to clean up the streams and rivers. And if you find one rather foul and you say it might not do any harm just to add a little more, we are just starting down the wrong track here.

Dr. HERNANDEZ. No; I wouldn't want to put those kinds of words in there at all, put in a little more. I think we have to meet the water quality standards, and that is the test of being clean.

Mr. EIDSNESS. Senator Chafee, I think there is a great deal of confusion as to the role of water quality standards as a regulatory tool under current law versus water quality standards under previous laws. Unless we clarify what the role is, it is toing to be awfully hard to focus. The current law requires the Agency to promulgate technology-based standards, including BAT technologies, and each industry is now required to meet those limitations which are written in its permit. The law also requires that water quality standards be met and a permit written, a legally enforceable permit, defining restrictions for contaminants, including toxics, for that industry facility. Right now if we write a BAT limitation that is insufficient to protect water quality, it is the responsibility of the State, and EPA in its oversight role to enforce that. The next step, water quality, is reflected in that permit. So you could have a situation where water quality is more stringent than BAT requirements. We have seen this in the past. EPA and States have issued permits in the past where consideration of water quality is more stringent and the discharge limitations for that industry could go beyond what would be in the BPT requirements in the old provision, now BAT technology. BAT technology may be more stringent than you would need to protect water quality standards, and that is the treatment for treatment's sake situation we are talking about. The fact of the matter is water quality standards are enforceable. There are permits written for toxic substances when they are present in toxic amounts. There was no enforcement tool under the old law and, on that basis, I understand your concern. I was with the Water Pollution Control Administration back in those days where there was no enforcement tool. We now have that.

Senator CHAFEE. Well, my time is up. Senator Mitchell?

Senator MITCHELL. Thank you, Mr. Chairman.

Dr. Hernandez, I have before me a document entitled "Analysis of EPA Proposals for Amending the Clean Water Act" that was prepared by the Natural Resources Defense Council, dated April 8, 1982. I don't know if it is still timely. What I would like to do is take just some of the summaries that are rather brief sentences, read them to you, and ask you to comment. You may well have seen this document, and it is probably an understatement to say it is critical of the proposals. I guess that doesn't surprise you.

So why don't I begin with the statement here. This is a summary regarding pretreatment. And I will read each one and ask you to respond if you will.

This says that:

> EPA proposes to: (1) abandon mandatory, national pretreatment standards for toxic industrial discharges into municipal sewage plants; and (2) create waivers for any industries that EPA may choose to regulate. This is a major retreat from the act's emphasis on uniform treatment technology for industrial toxics. The proposal would eliminate long-standing Federal leadership in this area, and place enormous financial and political burdens on the cities by requiring scientific and technical investigations for which there are not enough data, methods or technical resources. As a result, the serious toxics problems caused by these discharges will continue.

What is your response to that?

Dr. HERNANDEZ. First, the April 8 dateline refers to a set of proposals that were circulated amongst the agencies way before they were finalized. We didn't send them to Congress until May 25. However, I think I can speak to some of those things.

What we propose to do is maintain everything intact that the current law provides with the exception of giving the agency flexibility to allow municipalities, through a certification process that is well spelled out in the act in terms of all the things they have to do to meet this test, to run their own pretreatment program, one that they have in effect right now, and many cities do that.

The current pretreatment rules are quite complicated and place a huge burden on the POTW's, on these municipal systems. Our proposal won't change that, except to allow the flexibility of having them use their own system rather than for us to intercede between them and industries with EPA rules that are specific to each of these industries. Now we want to go on and adopt these categorical rules for something like six to nine industries, industrial groups. So if a municipality doesn't opt to run their own program, then we in fact have the rules in place to require pretreatment. So I really believe it is changed some.

Senator MITCHELL. Well, I have just been given their up-to-date comments which say that the final version is far more complex and damaging than the preliminary proposal.

Dr. HERNANDEZ. It probably is more complex, but it is just a difficult technical issue, that is all.

Senator MITCHELL. Well, it says, and rather than my trying to paraphrase it I will read it, it says, "In addition to the two components described earlier," which I have already commented on:

> EPA now proposes an exemption for municipal plants. Thus, any of the three partners in pretreatment could opt out: EPA by not issuing standards; cities by gaining exemptions from the program; and industrial sources by obtaining waivers. The new proposal is significantly different in its mechanics and its benchmarks, and it contains several subtle but damaging changes.

Would you comment on that?

Dr. HERNANDEZ. There is not a whole lot of specifics in there and you have to talk about specifics.

Senator MITCHELL. In fairness to them, they follow several pages of specifics, but I don't think my time would permit me to read all this and ask you to comment on them.

Dr. HERNANDEZ. This is a terribly tough issue. It is not an easy one. I think Senator Gorton and you yourself said we should have technical corrections. This is a technical correction. This is an issue of how do you make something work in a flexible and better way. We plan to go on ahead and adopt those categorical pretreatment requirements, not necessarily for every industry because some of them just don't have a lot of toxics in their discharges.

I think I can give you some example of the numbers I have from the various kinds of industries and industrial flows of toxic materials. When you look at those, you will find that the volume of toxics coming out of some industries is quite small, and to set some kind of pretreatment, categorical pretreatment, requirement is probably unnecessary for those. The major ones where we feel there is a serious issue we will go ahead and set them because the municipality has to have the tool and we have to have the tool should they opt not to run the program.

Senator MITCHELL. I can see my time is up. I am sure someone from the NRDC will be here and comment before this is over. One of the problems for this hearing procedure is you get one set of assertions. I am used to being in a courtroom, where when you make a statement there is a guy sitting next to you ready to get up and challenge it. I think you bring up more of the truth of the matter in those circumstances and more appropriate problems. That is why I am going through this.

Dr. HERNANDEZ. Senator Mitchell, one of the things I would like to tell you, though there are people who disagree, relates to the consent decree NRDC has against us. I think they have a built-in interest to go on and see the things in the consent decree held to. So you have to keep that in mind. Then let's take a look at another group that has an interest, and that is the municipalities. The language we have is one that has been suggested to us in part by an organization that represents the roughly 100 largest cities in the United States. They feel that EPA's mandatory categorical standard will impose great chaos in their cities' systems and that they can best run them, and they have suggested this as a route. We have got some really tough tests in here to make sure. So there are lots of people out there who believe we need to have this kind of flexible change. I have letters from half a dozen State Governors saying words like that, various kinds of associations, the State Sanitary Officers Association, people like that. So there is a strong bias on the other side to provide some kind of flexibility.

Now not all of us agree on what it is, and I think that is a task we have to go through. The challenge is how do we do this in a rational way that meets the environmental needs without having government from Washington, D.C., running everything in all of our municipalities across the country, but still provide that where needed we will be there.

Senator MITCHELL. Thank you, doctor. I see my time is up. I have more questions, but I will defer to you.

Senator CHAFEE. Dr. Hernandez, it is my understanding that the Chemical Manufacturers' Association, with EPA, produced a joint report, and it is also my understanding that this provides data indicating that combined physical, chemical, and biological treatment processes achieved significant reductions of toxics within five specific chemical plants. Now my question is as follows: What was the purpose of this study from EPA's perspective?

Mr. EIDSNESS. Senator Chafee, if I may answer that question. The study was designed to complement an effort that was already underway at EPA to determine the effectiveness of treatment of a variety of pollutants, and EPA basically designed the study and set the parameters for CMA to carry it out. There is some confusion, however, as to whether the conclusions of the study are EPA's or CMA's or both. EPA has not completed its analysis of the data which was developed as a basis of that study. So until we have done that we really can't say specifically what the conclusion would be.

But I can say, if you want to hear it, if CMA's conclusions are correct, I can tell you what those are.

Senator CHAFEE. Well, I get nervous in having the Federal Government collaborate with one of the regulatees on producing a study that is dealing with what kind of regulations are going to apply to those who have collaborated in the study.

Mr. EIDSNESS. Well, studies of this nature—I don't know whether "collaborate" is the correct word.

Senator CHAFEE. Who paid for it?

Mr. EIDSNESS. CMA paid for the actual work that was done, Senator.

Senator CHAFEE. So then it comes up with a label of EPA and CMA; is that right?

Dr. HERNANDEZ. I don't think that would happen unless it goes through a peer review process and we put our stamp on it that it is in fact accurate and that it is an EPA publication. Otherwise what has come out so far is a CMA interpretation of that work.

Senator CHAFEE. CMA is fine, I have nothing against CMA but if it is a CMA study, so be it, and I don't think it should have the imprimatur of EPA anywhere on it.

Mr. EIDSNESS. Senator Chafee, we did not lend EPA's name to that study. When I became aware of the fact that EPA's name was on the report itself, I wrote CMA to tell them we were not prepared to meet with them to discuss—I was not prepared to meet with their director to discuss the results of their analysis until my staff had completed its analysis. I understand just yesterday my staff met with CMA technical people to go over my staff's analysis of the data. So just to clarify, we did not lend our name to that study.

Senator CHAFEE. So it is inaccurate to call it a joint report?

Mr. EIDSNESS. It is inaccurate to call it a joint study, and the conclusions reached by CMA in that study do not reflect the conclusions of the Environmental Protection Agency. We have not completed our analysis and it has not gone to peer review.

Senator CHAFEE. What does the cover of the report say?

Mr. EIDSNESS. I don't recall.

Senator CHAFEE. Are there indications it is a joint study?

Dr. HERNANDEZ. We didn't print that.

Senator CHAFEE. I am not saying you printed it. They printed it. But if they printed it and called it a joint study, I think you ought to get that straightened out.

Dr. HERNANDEZ. We participate with so many groups on different things, technical associations, Water Pollution Control Federation, American Society of Civil Engineers, the air pollution people. This is one of those ways of working together on things, and I think it is an important part of life. Oftentimes you will have conferences where the conference proceedings will bear the stamp of a lot of different organizations. We have tried to make sure when our name goes on something that it is in fact approved by us by a peer review process we have in place, or it says this has not been reviewed by the EPA and does not represent the Agency's belief. Certainly if we had seen the CMA report ahead of time we probably would have said that.

Senator **Chafee**. Mr. Eidsness, what conclusions can be drawn from the report? What were the conclusions of the report?

Mr. **Eidsness**. Well, the best I can give you, Senator, is sort of a paraphrase of the conclusions that were reached by CMA in the report. They are as follows:

The final effluent concentrations of those priority pollutants which were analyzed in the study are generally low in the five plants which composed the study. Second, there were substantial reductions of the priority pollutants analyzed by biological treatment systems utilized at the five plants. Finally, the study demonstrates these five treatment systems, which were biological and other physical processes, are effective in removing significant quantities of the priority organic pollutants.

Once again, these are not EPA's conclusions, and it is sort of a paraphrase of the conclusions reached in the CMA study.

Senator **Chafee**. OK, I want to get into pretreatment, but, Senator Mitchell, why don't you finish your line of questioning and on the next round I will get into pretreatment.

Senator **Mitchell**. Well, I am going to continue as I did before, reading and asking you, Dr. Hernandez, to comment to the extent the comment is out of date, if you would respond to the criticism.

This deals with the BAT deadlines. It states:

> EPA proposes to (1) delay its duty to issue best available technology regulations for toxics until July 1, 1984.

I think that's out of date now.

> (2) Remove its obligation to review BAT rules every year; and (3) roll back industrial dischargers' compliance deadline from 1984 to 1988. These amendments are designed to undermine EPA's court-ordered responsibilities on toxics control, and to give industry an inordinate stretchout of their obligations.

Dr. **Hernandez**. Well, I think we have already discussed earlier today the 1988 deadline and why we selected it and what the other alternatives are. And you have indicated some of those court ordered deadlines are June of 1984, the latest, and I think there are four of them that fall in that June 1984 classification. What we are asking for is July 1 of 1984 because I believe it is appropriate for the Congress of the United States to set those guidelines rather than to have them mandated by a court decree. Now I realize a change in that date by Congress does not change the court decree, but it would give us an opportunity to go back to the judge and say the Congress has looked at this and has decided this is an appropriate date and we ask that this date be set.

Senator **Mitchell**. So you could convince the judge you could convince the Congress, and therefore you use that to convince the judge the second time around.

Dr. **Hernandez.** We are asking for a 1-day difference.

Senator **Mitchell.** For one only?

Dr. **Hernandez.** For four rules. We are asking they all come up the same date rather than staggered along.

Senator **Mitchell.** So it would not be a 1-day difference for everything.

Dr. **Hernandez.** No; it would give us some flexibility in getting them done and we feel would provide us with a little better management tool in the Agency and probably a better rule by that process, and I think you have to take that into consideration.

Senator **Mitchell.** Well, when I was a judge I thought everything I did was right. Now that I am not——

Dr. **Hernandez.** It is marvelous how changing positions changes one's attitude.

Senator **Mitchell.** You have experienced that, I guess.

Dr. **Hernandez.** Yes, sir.

Senator **Mitchell.** The next area I would like to discuss, again just reading down this list, involves permits. I will again just read it:

> EPA proposed to increase the maximum term of all Clean Water Act permits from five years to ten. This increase will ensure that polluters are protected from more stringent requirements under the Act for a decade. There will not be opportunities to require upgraded treatment—even if justified by advances in technology, cost-saving innovations, discoveries of new toxics hazards, or decisions by States to increase the protection of their water resources.

What is your comment to that, Dr. Hernandez?

Dr. **Hernandez.** Well, first, we are not giving people a decade of free ride, so to speak. I think you have to look at what kinds of things go into the building of a permit and how they were done originally. When they were originally written, they were done on best engineering judgment, best professional judgment because there were just no rules out there. So the first rounds that were done between 1974 and 1976, they were based on what can we do. They are expiring in the 1981–82 period and are being reviewed. Some of them will come up again this year. And it was the initial setting of the subsequent review, where you said, are we on target, are we doing what is right, and rules updating them to make sure they complied, that we have gone through the philosophical issues, or, are we meeting the needs of this stream or industry or municipality. Once we get through the second hoop, doing them again in 5 years, we don't believe serves any purpose. We believe it is redundant and not necessary. We believe going through them for a second time and doing them for a third time in another 5 years is probably not a useful tool. There are something like 65,000 of them. The amount of money we spent on this is on the order of $10 million a year right now. We feel that we can save the States money and ourselves by doing it at a less frequent interval.

Now you say, how is it we make sure we are not giving people a free ride? Well, as these new BAT rules come on line, our regulations today provide for a reopening of the permit, rewriting of it. Many of the permits that will be written today will anticipate what the rule is going to be and ask them to do these things—before the final deadline before they have to have them—on a permit compliance schedule so they will do these things. If a waste stream changes, we can go back and reopen it; either the industry, if they are doing less, or ourselves if we feel that they have added to the nature and volume of the waste stream, we can go back in and reopen the permit. I think that applies. The idea that somebody can get away with polluting for 10 years is not true. The rule remains in effect and you can go out there and enforce it at any time during this period.

Mr. EIDSNESS. Senator Mitchell, I also add another condition under which we would want to revise the permit is where water quality standards are changed or modified requiring more controls. That would be another reason for permitting authority. The EPA would want to go in even if it was a 10-year limit, even if it was a permit requirement.

Senator CHAFEE. Dr. Hernandez, I would like to turn to pretreatment for a minute. As I understand the proposals that you submitted, they provide that the Administrator is to have discretion as regards the issuance of it industry by industry, the so-called categorical pretreatment standards. Why?

Dr. HERNANDEZ. Well, some of these industries there could be as many as 34 categorical groups and subcategories, more than that. Many of these don't have significant toxic discharges such that you would have to write a categorical standards for them, or they don't predominantly discharge into municipal systems. Now there are some particular industries that are small, found in urban areas, that discharge into municipal systems. And the bulk of those constitute typically the metal platers, metal finishers, and the plastics industry. We feel there are something like nine different groups that have significant volumes of toxics associated with them. That is why we would base it on the need to do something.

Senator CHAFEE. You have agreed to promulgate these categorical pretreatment standards on a specified schedule? Now, if you give the Administrator the discretion to issue or not to issue these pretreatment standards, where are you then?

Dr. HERNANDEZ. We have already issued some and the rest will be part of the BAT rules as they come along the line. Some of those will be guidelines, some of them will be mandatory. We are going to provide the basic information on many of these things, but some of them will not be in the same format. So the information will be provided. Now I just don't believe that the Congress has to rely on the courts to tell Federal agencies what to do.

Senator CHAFEE. Well, except you have entered a consent decree.

Dr. HERNANDEZ. Yes, sir.

Mr. EIDSNESS. Senator Chafee, if I may, we have learned a lot since 1976 when that consent decree was signed. The Agency has done extensive field work, spent $120 million in contractor money going out getting data from industry, and determining the effects of treatment. We also instituted what we call a 40-city study to determine the efficiency of removal of toxics from conventional biological municipal treatment facilities. We have conducted a regulatory impact analysis. All of this large body of data has led us to conclude there are a number of industries who are indirect dischargers of toxics but the toxics don't pass through the facilities. Therefore, it doesn't seem to make sense to promulgate rules for things that are not a problem.

I should point out, and I think it is our intent, we would still prepare the technical guidelines for the industry that we would not regulate, if given the discretion, so those municipalities who are developing their own local programs will have the benefit of our analysis and the technical study done to determine the appropriate roles for these industries which we did not choose to promulgate categorical pretreatment requirements.

Senator CHAFEE. Even if EPA decides to promulgate categorical standards, your proposal, as I read it, would not require that they be technologically based. Is this correct?

Mr. EIDSNESS. No; they are absolutely technology-based requirements. Really the pretreatment requirement is very similar to the effluent guidelines; they are based on the same kinds of considerations.

Senator CHAFEE. What we will have to do is get back to you and see where is the difference in our interpretation of that matter, whether they are technology based or not.

Mr. EIDSNESS. We intended it to be technology based. The intent was to clearly promulgate categorical standards based on technology.

Senator CHAFEE. Let me go now to the exemptions that you would be granting to the publicly owned treatment works to run their own programs, as it were. Since the exemption condition requires the POTW to have adequate legal, financial, technical, analytical, administrative, authority to insure the successful operation of a pretreatment program, that makes me somewhat skeptical. What do you mean by "adequate?" Who does the judging?

Dr. HERNANDEZ. I think EPA would. They send us a plan and States will have to approve it before we will accept it, and so there is the process of people reviewing this in terms of adequacy. The interesting thing, Senator, is that our existing pretreatment requirements place these same demands upon municipalities to essentially the same extent. There is a well written article in the recent Journal of the Water Pollution Control Federation that outlines each of the things municipalities must now do to meet EPA pretreatment regulations. Under ours they won't have to do anything different at all except say we want to run our own program.

Senator CHAFEE. Who is going to monitor things? I am not clear how it is going to work if you give an exemption to Chicago to handle its own pretreatment.

Mr. EIDSNESS. The amendments we propose provide for an annual recertification by the municipality.

Senator CHAFEE. By the municipality?

Mr. EIDSNESS. By the municipality.

Senator CHAFEE. You mean they recertify themselves?

Mr. EIDSNESS. In effect, yes. Now we would have to write rules or guidance on exactly how that would be done and what showing, if any, would have to be provided to the reviewing agency, whether it be the State or EPA. More importantly, I think the incentive for doing a good job and keeping your program working properly is going to be very great on a municipality because the sanction for not doing so is that, one, we can withdraw the exemption and then they are required to go back and follow all the Federal requirements on the general requirements and categorical where we promulgate. That is a pretty heavy sanction to impose. The other sanction is that if there is a passthrough of pollutants that violates the permit conditions, we enforce against them under the enforcement provisions of the Clean Water Act. It is not as if there is a not a Federal presence. It is an annual Federal presence on the annual recertification.

Senator CHAFEE. Yes; they recertify they are doing a fine job, so I am skeptical about that. But who is going to do the inspection to make sure they are doing a fine job?

Mr. EIDSNESS. EPA and the States currently go out during the summertime when the weather is nice and do physical inspections of facilities, where the monitoring reports give us concern with regard to effluent conditions. This is a function that will also be by the State if it is the permit issuing authority. So we will be able to ascertain during those inspections the extent to which they are meeting their requirements.

Senator CHAFEE. Well, I just hope there is this careful monitoring. After all, the whole purpose is the Federal Government is paying 75 percent of these facilities and it behooves us in the national interest to make sure they are kept up to snuff and indeed their discharges meet the permit requirements.

Mr. EIDSNESS. This I think is an excellent question, the question of how do you know the certificate is in fact happening. I have tried to answer it in terms of the enforcement and sanction of taking back the requirements once we discover something. But the way I envision this thing proceeding, Senator, and we have sort of fleshed this out, we would basically at the time the applicant, the municipality, submitted its application certifying all these things, one thing that would have to happen is that the State would have to certify there is a permit which addresses water quality standards that limits toxic pollutants that are passing through. That would have to be done to begin with. Second, I would envision EPA would publish notice in the Federal Register of our intent to certify or approve or reapprove an application or recertification and ask for public comment. And based on the comment we would receive, if we felt that there was some discrepancy between what the municipality alleged versus comments made by the public, or based on our review of the permit and inspection, then we would have the right to go and require the municipality to prove what they say they have in fact done.

Senator CHAFEE. Well, you are putting a tremendous burden on the public. A lot of these elements the public would never know about, won't have the capacity to monitor; and to expect the public to be able to respond it seems to me is not accurate.

Mr. EIDSNESS. Well, we won't rely wholly on that. Even under the current ocean discharge waiver provisions of section 301, there is a procedure to allow the public to question either the State or us as to the propriety of the application. We would also have a substantial amount of information ourselves to make a determination from construction and development of general pretreatment programs and the supporting documentation. So we would be able to go into the records and see, in fact, what the municipality has done. In addition, we have the compliance reports they submit to us or the State, and we will know whether or not they have met the secondary treatment requirement, which is a precondition for even a consideration for an exemption.

So I think it will be a dual responsibility, but clearly the ultimate burden will be on the EPA or State, as it is the issuing authority.

Senator CHAFEE. Well, we have some questions to submit for you to answer, Dr. Hernandez.

Senator MITCHELL. Just let me say, Dr. Hernandez, I would like to submit to you in writing the remainder of these several critiques of the proposals and ask you to respond in writing to them, if you would please, along the lines we have done previously.

Dr. HERNANDEZ. Yes, sir.

Senator MITCHELL. I don't want Ms. Dinkins to feel left out here so I would like to ask her just one question.

As you know, the proposed changes include making certain violations of the act felonies as opposed to misdemeanors. The proposal, as I understand it, is to delete the word "willful" and insert "knowing violation," which would make it a felony, and retain the misdemeanor provisions for negligent violations. Do you support that proposed change?

Ms. DINKINS. Yes; Senator, we do very strongly support that provision.

Senator MITCHELL. And is the Department of Justice prepared to vigorously enforce the law both in terms of making available the necessary resources to do so and in actually seeking to impose felony sanctions where that is appropriate?

Ms. DINKINS. Yes, sir, we are very committed to a criminal enforcement program. We think that is an excellent way to deter violations of the statute. We have worked with the EPA which now has a criminal program actively in effect, and we have also begun to work with the FBI to make sure these types of activities are investigated and if appropriate prepared for prosecution.

Senator MITCHELL. Would you give me in writing, Ms. Dinkins, a summary of enforcement activities since January 1981 under the act, and both in terms of absolute numbers and type of cases and then a comparison with the prior 18 months before that?

Ms. DINKINS. Yes, sir. You are principally interested in criminal prosecution?

Senator MITCHELL. Yes, right.

Ms. DINKINS. Yes; we can do that. We would be glad to do that.

Senator MITCHELL. Would you just give me a letter to that effect.

Thank you, Mr. Chairman. I will submit the rest of mine.

Senator CHAFEE. If you would respond, gentlemen and Ms. Dinkins, to the questions that are submitted.

I have one question for Mr. Farbrother, representing the Department of Defense. Under these amendments you are seeking some changes to the Presidential exemption; is that correct?

Mr. FARBROTHER. Yes, sir.

Senator CHAFEE. What is the matter with the present exemption? Why do you want to change them?

Mr. FARBROTHER. When we were over the past several years running mobilization exercises within the Department of Defense, thinking carefully through all the steps that would have to be taken if we were to be engaged or our allies engaged in major conventional conflicts, we discovered a number of impediments. One of the impediments to mobilization we found was in the Clean Water Act. Specifically, under certain scenarios we would have to put into full production a number of Army ammunition plants that are now in reserve. Those plants, we would anticipate, would produce toxics and would be considered new sources since some of them are not operating at all now. The current law does not give even the President the power to exempt such activities, and we wouldn't be able to put them into production. We are seeking that kind of legal authority here now so that we don't have interference with the Nation's ability to mobilize and defend itself.

Senator **Chafee**. It wouldn't have any interference with the nice substantial outflow of toxics, would it?

Mr. **Farbrother**. There wouldn't be an immediate interference. Senator, as we see it, the control of toxics and all sorts of hazardous materials in our environment is a top priority for the Nation at all times. During times of military emergencies, I believe there is a higher priority, and that is the defense of the Nation. Under those circumstances, we seek the flexibility to put into operation certain industrial plants, with the understanding that we will bring them into compliance as soon as possible.

Senator **Chafee**. What would constitute the emergency? Would you call it a declaration of a national emergency or something to that effect?

Mr. **Farbrother**. The provision that we are requesting, that would be operative only in cases where the President or the Congress declared a state of war or national emergency. However, we can envision circumstances short of those kinds of declarations where we would still have to step up our production of ammunition. Those conditions would also be covered by the amendment we are seeking.

Senator **Chafee**. Doesn't the declaration of a national emergency occur fairly often?

Mr. **Farbrother**. I am not familiar with that. What I can say, though, is that the President under the current law has had exemption authority for certain—not toxics and not new sources, but with other pollutants, and that the Defense Department has never had such an exemption. So it is not at all a common occurrence for us.

Senator **Chafee**. All right, fine. Thank you all very much for coming here.

Dr. **Hernandez**. Senator Chafee, I wonder if I might make one statement in summary.

Your initial concerns were we not start in on a new mid-course correction. We are not proposing another mid-course correction. I think we can characterize what we propose in two groups—one technical corrections that deal with deadline changes, dams and nonpoint sources, issues like that, and then there are at least 7 of our 15 changes that are designed to enhance EPA and State administration of the act, administrative, civil penalties, felony penalties, partial delegation, extension of permit life, environmental modification fees so we can charge for people requesting specific waivers and exemptions and that 5-year authorization period we have talked about. So I believe those are designed to help us in implementation of the act, as is the pretreatment issue. And I would characterize our changes as following in those things and not midterm correction.

Senator **Chafee**. I think you are right. We appreciate your being here.

Senator Randolph, do you have a statement?

Senator **Randolph**. Mr. Chairman, first, I want to say that a member cannot be two or three places at the same time.

Senator **Chafee**. That probably applies to even those who aren't members.

Senator **Randolph**. In the Labor and Human Resources Committee this morning, there were matters of concern there that seemed to call for membership in as large a number as possible.

I will not take the time to make a statement. I want to say to you, Mr. Chairman, that I have joined in the cosponsorship of S. 2652. I feel that this is a very well reasoned approach, and there are certain amendments to the Clean Water Act which, after experience, seem to be valid. I think that is so with most any legislation that we pass. The oversight, the review, the study of how an agency handles that which has come from this committee and then ultimately the Congress is very important.

The matter of clean water in America is a subject I think that is very, very important. The water levels—and that is not an issue here—have dropped precipitously in States. You would hardly understand how that could take place. But throughout America, regardless of whether the water is clean or contaminated, the water level in this country is a very severe problem as it constantly sinks. Is that right, Dr. Hernandez?

Dr. **Hernandez**. That is right. That whole Midwestern basin that goes from Nebraska, Kansas, Texas, and a part of New Mexico, the water levels in the Ogallala formation are declining, and one of these days we are going to be at the end of the straw with nothing coming up.

Senator **Randolph**. I appreciate your making that statement because it is a fact. I think charged with the responsibility which, under your leadership, Senator Chafee, will be a matter of continuing effort within this committee to understand the problem, try in the legislative way to do what we can. This is a priority in the committee as often other matters are a priority.

I have recently seen some streams which were once alive with game fish that are not alive with game fish today. But I have seen other streams that were very, very heavily polluted that are now filled with game fish. And so we find on both sides of this issue situations which concern us and worry us. And I, Dr. Hernandez, have been convinced that you and your associates are attempting to do a constructive job in this field.

Dr. **Hernandez**. Thank you, sir.

Senator **Randolph**. I feel that very strongly. Not only did I meet with you when you were a nominee, but also to continue with you and your staff to try to work forward with you and for the people of the country as we go through this subject matter.

Thank you, Mr. Chairman.

Senator **Chafee**. Thank you very much, Senator Randolph. No one on this committee has been a stronger supporter of this type of legislation and indeed all legislation in the environmental field. So we appreciate your taking the time to come this morning.

Senator **Randolph**. Thank you, Mr. Chairman.

Senator **Chafee**. Thank you, Ms. Dinkins and gentlemen.

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